

Amendments to Senate Bill No. 287
3rd Reading Copy

Requested by Senator Joe Balyeat

For the House Business and Labor Committee

Prepared by Sue O'Connell
March 19, 2009 (3:01pm)

1. Page 2, line 19 through line 20.
Following: "the skin" on line 19
Strike: ", except for" on line 19 through "purposes" on line 20
2. Page 3.
Following: line 2
Insert: "(g) sets fractures;
(h) performs physical examinations that invade the body in ways that cause imminent or discernible risk of significant harm, including gynecological examinations;"
Renumber: subsequent subsections
3. Page 3, line 3.
Following: "KNOWINGLY"
Strike: "AND"
Insert: "or"
4. Page 3, line 6.
Following: "i"
Strike: "OR"
5. Page 3.
Following: line 6
Insert: "(k) uses a professional title that is reserved for an individual licensed or registered to provide services under Title 37; or"
Renumber: subsequent subsection
6. Page 3, line 17.
Strike: "(1)(G)"
Insert: "(1)(i)"
7. Page 4.
Following: line 24
Insert: "(3) Nothing in [sections 1 through 6] may be construed to prevent a person from bringing an action for negligence against an individual providing unlicensed health care services or from seeking any other civil remedy allowed by law."

is to specifically vote against it, sort of an "opt-out" pay-raise

proposals typically die in committee. No doubt the

ring", he said.
"Under President Bush's

the Billings facility would not be under the new ownership.

O'Connell, chairman of the Senior Citizens League.

Bill protects access to alternative care



by Deborah Kimmel

"Closed by Order of the Board". This could happen to your yoga teacher, wellness consultant, homeopath, massage therapist, personal trainer, or any member of the 1,200+ unlicensed alternative and complementary health-care professions.

In about a year's time, 22 Montanans were told to stop practicing within their own profession — practices they were trained to do — because they slightly overlapped with a licensed profession. They had

done nothing wrong, no one was harmed, and they weren't pretending to be licensed.

Senate Bill 287, the Consumer Health Freedom and Access Act, addresses this problem and adds additional public protection. There is no clear statutory authority allowing one health-care profession to pick on another unlicensed one, and, as a result, a fair amount of litigation has taken place. The courts agree: no board should use its power to effectively destroy another profession without a compelling reason. More than 100+ years of court decisions have resulted in clear guidelines and public protections that are implemented and exceeded by SB 287.

Practitioners already have these rights and protections to perform their profession. But, when a practitioner doesn't know their rights, it is easy for a board to sanction them. Prior to bringing SB 287 forward, practitioners really didn't know that they could protect themselves.

Even so, the only recourse is for the practitioner to take the boards to court to assert their rights. These practitioners, in

many instances, are lower-income and can't afford to litigate.

SB 287 levels the playing field by requiring the boards to comply with these court decisions. It also adds additional consumer protections. Practitioners are required to disclose to the consumer their background, the state's status concerning these practitioners, and other information designed to help the consumer make decisions concerning their care.

Practitioners are also prohibited from performing certain acts that are a danger to the public and require a license to perform. Included is a clear remedy if the consumer is harmed.

This issue is dividing the health-care community. On one side are the licensed professions, and on the other are unlicensed alternative health care professions. In turf battles like these, it is usually only the practitioners who duke it out. What is interesting here is that consumers are overwhelmingly supporting SB 287. Nearly 227,000 Montanans have utilized health-care services from an unlicensed provider in

the past year. Consumers understand that the bill includes consumer protections not currently in place and that it protects their right to seek out the health care of their choice.

SB 287 passed the Senate on a vote of 32-18. The opponents assert that the senators did not know what they were doing or did not understand the ramifications of the bill. We disagree. The Senate voted to take care of an issue in a manner that is cost-effective.

The only other way to protect these professions would be to license them all. First, these professions are low- or no-risk. Second, licensing would harm the diversity of these professions, and some would become extinct in the process. Third, a minimum of about 400 bills would be needed to cover the 1,200+ professions at a tremendous cost to the state — millions of dollars just for rulemaking alone and much more to go through the legislative process.

In short, licensure would be implemented not to protect the public but to protect the turf of these professions, and that's not

good policy. The Senate agreed that SB 287 is a good solution: when boards behave badly, change the behavior — don't create new bureaucracy.

SB 287 is now before the House Business and Labor Committee, and the hearing is scheduled for Friday, March 20. Doing nothing means that someday your favorite practitioner could be shut down for no compelling reason. SB 287 prevents this and ensures that if someone is harmed, the practitioner pretends to be licensed, doesn't truthfully disclose their training, or otherwise performs prohibited acts outlined in the bill, that practitioner can be shut down.

If you are a consumer interested in protecting your right to access the health care of your choice, please contact your representative and members of the House Business and Labor Committee and encourage them to vote for SB 287.

(Deborah Kimmel of Missoula has been a health educator and touch therapist for the past 22 years.)

"Inarguable"
(A True Story!)

No pun intended, but this is a LIVE report from a Texas

Sheriff! Even though this is a heinous criminal guilty of un-



Sure detects THAT sunbitch.

SB 287 - Bill Summary

Purpose:

A bill to protect consumer access to the health care of their choice, balancing choice with consumer protection.

The Bill:

- **Fixes a glitch that makes the practice of most alternative and complementary health care professions illegal (unlicensed professions are in technical violation of broadly worded practice acts).**
- **Codifies already existing case law – the courts have generally held that practitioners from unlicensed professions may not be sanctioned for practicing medicine without a license when certain conditions are met.**
- **Clarifies the circumstances under which a board may sanction a professional from an unlicensed profession.**
- **Standardizes board behavior.**
- Clarifies who boards may not sanction for practicing without a license when ***certain conditions are met*** (codifies and exceeds court guidelines). The conditions include:
 - Disclosure – Practitioners from unlicensed professions must disclose in writing to the client information that includes their training and experience and clearly states that they are **not** licensed by the state of Montana.
 - Prohibited Acts – Persons from unlicensed profession may not perform certain acts that are so dangerous that only a licensed professional may perform them – even if they have training to perform those acts.
- **Protects the Consumer:**
 - Provides for sanction when prohibited acts are performed or other requirements of the exemption are not met.
 - Informs the consumer as to the practitioner's background and clarifies the person is not licensed – something not currently required by law. These professions are already available – this gives the consumer the tools to make an informed decision.
 - Protects access to these services. In so doing, reduces costs of health care and prevents discrimination of unlicensed professions and monopolization of services by licensed professions that drives up costs.
 - Consumers can still bring suit against anyone for malpractice or negligence.
 - Boards can still sanction practitioners who cause harm or are practicing negligently. Boards retain control over their own licensees.
- **Addresses an issue without adding additional bureaucracy or more licensure.**
 - These professions are low risk, and for the most part, have few numbers of practitioners. Licensure for these 1200+ professions is not needed or feasible, but some level of protection to allow for the practice of these unlicensed professions without sanction is needed to protect the public's right to seek out the health care of their choice.
 - The current system for sanctioning a person practicing an unlicensed profession is still utilized. The bill clarifies the circumstances under which sanctions are implemented.

Every step of the way, amendments have been added to the bill to strengthen the consumer protection aspect, once the concerns were pointed out by the opponents – even on the Senate Floor. The Montana Health Freedom Coalition added these amendments as a show of good faith: we believe that it is possible to enact legislation that balances consumer protection with consumer access to low or no risk professions that do not require licensure.

How does Health Freedom Legislation protect the public?

The public is protected in 5 ways:

1. **An informed consumer is a protected consumer.** By signing a disclosure, the consumer acknowledges that they've gotten a copy of the practitioner's training and credentials and that the person is not licensed by the state. Right now, consumers don't necessarily know what the practitioner's training is and assume they're all licensed. Practitioners at this time are not compelled to provide this information. Requiring this information provides a layer of protection that is not currently in the law. As we all know, training does not guarantee competency, but the consumer now has the information to make decisions concerning the type and training of the practitioner that they choose to see.
2. **It protects the consumer's access to ACHC and other health care professionals** by ensuring that they can seek out the practice of their choice and not have their choices limited because a licensed occupation doesn't think that unlicensed practitioners should be able to do some of the things that they do.
3. **It does NOT take away the consumer's legal right to sue anyone for malpractice or negligent behavior.**
4. **It does NOT take away the occupational boards' right to go after someone who is practicing negligently.**
5. **It does NOT take away the occupational boards' right to regulate their own licensees.**

How does this affect licensed professions?

Most importantly this bill does NOT take away the occupational boards' right to go after someone who is practicing negligently, nor does it take away the occupational boards' right to regulate their own licensees.

Health Freedom changes how occupational boards sanction non-licensed practitioners. Currently boards can go after anyone who is infringing upon their scope. Unfortunately, ACHC infringes on just about everyone's scope. So, a board can sanction a practitioner just for merely using a word, or performing an act that they've been trained to do, regardless of whether or not the public has been harmed. This has happened in the state of Montana.

Health Freedom legislation requires the board to ask different questions. Current law only requires the question: is the person doing what I do? This has been enough to sanction the offending practitioner, despite their training and competency. The proposed legislation now shifts the questions to those of harm and competency: is what the person doing creating harm or a risk of harm? If someone does an act that they are not trained to do, then there IS a presumption of harm and the occupational board is well within its rights to sanction the ACHC practitioner regardless of whether harm has occurred. If the person is not performing the prohibited acts and their clients have not been harmed, or are under the risk of harm (meaning the person is trained in it and disclosed that training on the disclosure form), then the answer is "no" and the practitioner is not prosecuted. This is a shift – there is no longer a presumption that it is harmful for someone other than a licensed person to do a particular act.

Acts that constitute harm

The legislation includes a list of prohibited acts, or acts that constitute when harm has occurred. The list includes what the courts have held to be the acts commonly thought to cause harm under a medical practice act: performing surgery or puncturing the skin (except for finger-pricking screening purposes); medically diagnosing; prescribing or administering x-rays; prescribing or administering legend drugs, using devices that require a prescription for use, or prescribing or administering controlled substances; or the practitioner misrepresenting him or herself as licensed by the state. Also included are performing a high-velocity low-amplitude thrust to a joint and working under circumstances or conditions that cause or create an imminent or discernable risk of significant bodily harm, serious physical or mental illness, or death.

In general, the list needs to be broad enough to ensure that the public is protected, but not specific enough so as to restrict the practitioner from performing acts that they've been trained to do.

We believe that the Consumer Health Freedom and Access Act provides a good and necessary balance between protecting the public from harm, yet preserving their right to access the health care of their choice. We hope that you will support this effort as well.

Consumer Health Freedom and Access Legislative FAQ Sheet

Prepared by MHFC Legislative Liaison Deborah Kimmel

Why is Health Freedom needed? What's the problem?

1. **Alternative and complementary health care (ACHC) professions are technically breaking the law and risk legal sanctions by the state because some of the competencies of these professions slightly overlap the scope of broadly written professional practice act definitions.** All ACHC professions except those already licensed by the state of Montana are included in the practice of medicine. Many are also in technical violation of other licensed professions' practice acts for the same reason. **As a result, some licensed professions are prohibiting unlicensed practitioners from practicing the skills they've been trained to perform as part of their practice.**
2. **The courts have very clearly said that boards may not penalize or prohibit other professions unless certain conditions are met:** someone is harmed, someone pretends to be licensed, or does certain prohibited acts. These are codified and exceeded in SB287.
3. **The right of the consumer to seek out the health care of their choice is limited** because the unlicensed profession goes "underground" and is not as available or quits practicing altogether.

Health Freedom legislation addresses these problems by protecting the right of these professions to practice provided they follow some simple rules that protect the consumer from harm.

Why not license these practices?

States license professionals in order to protect the public from harm, yet many ACHC and other unlicensed practices do not meet that threshold of harm. Those that do are already licensed in Montana. **There is no need to license a profession when there is no or low risk of harm to the public.** It is expensive, drives up the cost to the consumer and creates additional unnecessary bureaucracy. It is however, important for the unlicensed practitioner to be able to provide the services that they've been trained to perform, and the courts allow it. While many professions turn to licensure to protect their right to practice (in the name of public protection), it is not the true purpose of licensure. Health Freedom is a different approach that balances the right of the practitioner to practice without fear of prosecution AND most importantly, protects the consumer.

How does a Health Freedom Law Work?

The bill clarifies and standardizes the conditions under which boards may sanction someone from a different profession other than the one represented by the board. To ensure that the threshold of harm is not violated, a list of acts is included that the practitioner cannot perform. In addition to the prohibited acts, the practitioner is required to provide a written disclosure that the client signs and the practitioner keeps on file.

Is this type of law new?

Health Freedom in some form has been enacted in six states: Minnesota, California, Idaho, Rhode Island, Louisiana, and Oklahoma. Many more are introducing legislation that is very similar to the bill we are proposing.

Are we making new law?

This type of law, at least as far as prosecution for practicing medicine, **has a long basis in constitutional law.** Many court cases throughout the country have been decided in the practitioner's favor when the practitioner has been able to show that they haven't caused harm, aren't doing harmful acts, and the training, background and credentials of the practitioner has been disclosed in writing to the consumer. A Health Freedom bill codifies it into law, rather than having it tried over and over again in the court system. What the national movement is about now (and so is the bill we propose), is expanding this law to apply to other occupations, not just the practice of medicine. This is due to the fact that many modalities/acts that unlicensed practitioners have been trained to perform as part of their profession overlaps with licensed professions.

To: Montana House Committee on Business, Labor, and Economic Affairs
Subject: SUPPORT SB 287, Consumer health freedom and access act
Date: 2009 March 03

Please support the "Consumer health freedom and access act" (Montana Bill #LC0654, SB287). Here's why I feel it is needed in Montana:

Background — Prosecution for practicing medicine without a license

In many states, unlicensed health practitioners (herbalists, massage therapists, health educators, etc.) have been targeted with legal harassment by medical boards and other licensed professional associations, even though there is a long history of judicial case law (common law) that has established the right of these practitioners to offer their services and the right of the public to seek them out, as long as these practitioners do not attempt to deceive the public by behavior or language that implies they are licensed medical/health practitioners when they are not.

Advocates for health freedom believe that if an individual wishes to obtain the services of an unlicensed health practitioner, that that individual should have the right to do so, and that an unlicensed health practitioner should have the right to offer his or her services without harassment by or permission from government, as long as there is honest disclosure and no fraud or deception involved.

The following article reveals how prosecutions are frequently based on issues of word-play and debates over professional "ownership" of such words as "medicine" and "diagnose" and the terminology of medical physiology and anatomy.

- <http://www.rmhiherbal.org/a/f.ahr3.rights.html>
"The right to practice herbology, legal history and basis";
by Roger Wicke, Ph.D.; Rocky Mountain Herbal Institute, 1995.

Many health practitioners remain unaware of how use of these words can be used in certain contexts as prima facie evidence that the practitioner is practicing medicine, even in cases where most ordinary people would understand that the practitioner is not a doctor and has made no attempt to deceive people into thinking he or she is a doctor, but is merely attempting to educate.

(I wrote the preceding article over 10 years ago after witnessing herbalist colleagues of mine being prosecuted for practicing medicine without a license. After hearing conflicting opinions about what "practicing medicine" legally entailed, I decided to spend several hundred hours of my own time to research the U.S. case law on this issue. The resulting article has been on our website for 10 years and has been confirmed by legal professionals and others with knowledge of how the system works.)

Montana SB 287 would protect unlicensed health care practitioners from legal harassment as long as they accurately inform their clients of their education and qualifications (and do not engage in specifically prohibited acts like surgery or penetration of the skin), so that individuals seeking such services can decide for themselves if the practitioner's qualifications will likely meet their needs.

Health profession licensing — the promise vs. the reality

I highly recommend reading the following article by a fellow herbalist, which explains why licensing often does not live up to its promise of protecting the public health, safety, and welfare:

- <http://content.herbalgram.org/iherb/herbalgram/articleview.asp?a=2524>
"Some Arguments against the Standardization of Herbalists"
by Stephen Buhner. In: *Journal of the American Botanical Council*; Issue 58, pp.54-58.

In summary, Buhner outlines the following negative effects of professional licensing:

- often increases costs to the public;
- creates de facto professional monopolies;
- inhibits competition;
- distorts goals of professional education by shifting focus away from improving clinical competence to elevating the profession's academic and economic status;
- often results in no discernible improvement in clinical outcomes, and in some cases, actually diminishes quality of clinical outcomes by inhibiting creative solutions and innovations.

Having provided education to herbalists and other health professionals for many decades, I can attest to Buhner's conclusions in the realm of herbal practice. The competence of practitioners who have taken my courses has had little correlation to whether they are licensed or not. I have had dedicated and competent unlicensed herbalists and medical doctors complete my courses; on the other hand, many licensed practitioners are looking for options to complete CEU (continuing education) requirements with the least amount of effort, and I discourage these people from starting my courses, because I believe in doing something well or not at all. Other authors and independent reports have questioned whether conventional CEU requirements promote increased competence. Too many licensed practitioners approach continuing education with a sense of entitlement — the notion that their license entitles them to get by with a minimal effort, in contrast to unlicensed practitioners who know that the primary determinant of their success is client satisfaction and clinical results.

Safety concerns — herbs vs. pharmaceutical drugs

Regarding the safety of herbs, one need only examine the statistics. Pharmaceutical drugs, *properly prescribed* according to established medical criteria, are the fourth leading cause of death in the U.S. — 106,000 deaths/year (ref: *Journal of the American Medical Association*, July 2000). Properly administered herbs cause an average of one death per year in the U.S. According to Buhner, "Other herbal deaths, estimated to be approximately 50 per year, are mostly attributed to the improper use of ephedra (*Ephedra sinica* Stapf., Ephedraceae) as a weight-loss aid or energy booster. (The popular use of ephedra for weight loss and energy is a separate issue and one that should be dealt with through other, existing product-regulatory channels. It is unrelated to the regulation of herbal practitioners.)" I would add that the vast majority of cases of ephedra abuse are self-inflicted, without or in spite of advice from herbalists, who, in my experience, are uniformly aware of the problems irresponsible ephedra marketing has caused. Additionally, to place this all in perspective, USDA pharmacologist-herbalist Jim Duke points out that alcohol (ethanol) kills about 500,000 people each year, yet we allow people

to "self-medicate" with alcohol at their own discretion.

The double standard that exists regarding safety of herbs vs. pharmaceuticals has been the subject of much popular outrage. The FDA refuses to ban Aspartame, a synthetic food sweetener whose lethal toxicity has been the subject of thousands of articles. The New Mexico legislature at one time considered a bill to ban it for use within their state, but lobbyists for food manufacturers and pharmaceutical companies heavily fought the bill, which was defeated. Yet single instances of adverse effects from an herb are trumpeted by the medical-industrial complex as evidence of need for regulation of herbs and of herbalists. We allow people to poison themselves with alcohol without restraint, yet whenever people desire to improve their health with herbs and natural supplements, these become the subject of detailed scrutiny by government agencies and watchdogs for pharmaceutical profits. The blatant self-interest and hypocrisy in this double standard is becoming evident to a majority of the public, who demand alternatives and freedom of choice. Government agencies have, with increasing frequency, and with the complicity of the licensed health professions, abrogated their duty to protect public health and safety in favor of protecting pharmaceutical profits and professional monopolies.

What SB 287 does and does not do

I have examined the current wording of the bill in detail, and I believe it is a good bill for several reasons:

1. Does not really create new law, but does create a clearly worded standard for Montana that restates what is actually already judicial case law common to many states of the U.S. (Because of this, I am puzzled why many of the licensed professions have opposed this bill; do they wish to overturn over 150 years of U.S. judicial case law that has cautiously and incrementally established guidelines of fairness regarding this issue? Or do they merely wish to keep this information secret, so that innocent practitioners will remain ignorant of the proper procedures for protecting their rights?)
2. Creates no new administrative bureaucracy, but merely places unlicensed health practitioners, state health profession boards, and the courts on notice of their rights, duties, powers, and limitations. (So that unlicensed health care practitioners will no longer need to do hundreds of hours of legal research simply to learn how to defend their rights, which various U.S. state courts have already delineated.)
3. May actually reduce administrative costs by eliminating legal gray zones that have been used to create fear and confusion, tie up the courts with nuisance cases, and in many cases have been used to destroy the livelihood of honest health practitioners.
4. Protects the right of the public to access many natural/alternative forms of health care and to decide for themselves whether a practitioner's qualifications meet their personal standards.

For more information

Current wording and status of the bill can be tracked here:

- [http://laws.leg.mt.gov/laws09/law0203w\\$.startup](http://laws.leg.mt.gov/laws09/law0203w$.startup)

Enter SB 287 in the form at top of page.

For more information, please contact Deborah Kimmet, who has been the primary organizer behind the early drafting of this bill:

Deborah Kimmet
deb@debkimmet.com
406-251-9704

I encourage you to support this bill (#LC0654, SB 287).

Sincerely,
Roger W. Wicke, Ph.D., Director
Rocky Mountain Herbal Institute
c/o PO Box 579
Hot Springs, Montana
Phone: 406-741-3811

Conflicts in Montana Law: Analysis

Where Do ACHC (Alternative and Complementary Health Care) practices conflict with conventional/allopathic practices? And other issues...

Prepared by Deborah Kimmet, MHFC

Contents:

- Introduction
- Montana Law & ACHC – General Provisions (Penalties)
- Analysis by Profession: Is There a Conflict?
- Previous ACHC Freedom Legislation in Montana

Introduction:

With the exclusion of Naturopathic Physicians, midwives and acupuncturists, ACHC practices are not licensed by the state of Montana. Many conventional practices are licensed. Since there is overlap among these practices, there is the potential that ACHC practices could be prohibited – or at the least individual practitioners ordered to cease and desist their practice because of this perceived overlap.

It is just not feasible or necessary for all of these ACHC practices to seek licensure. The regulatory climate is not conducive, nor do the majority of these practices when ethically performed endanger the consumer. The Pew Health Professions Commission¹ does a good job of pointing out the problems of the current regulatory climate. Some professions are granted broader scopes than others, which causes those with broad scopes to protect their scope of practice. Laws are written to define the differences between professions, thus creating conflict as each profession attempts to protect its territory and maintain those boundaries. This protectionism does nothing to protect the consumer, but instead restricts access to services, drives up costs, and stifles development of new professions.

From what we have seen in Montana, emerging professions or professions seeking to be licensed have little chance of entering the legislative arena and emerging unscathed with an intact scope of practice: the legislative process and legislators tend to side with the more established professions and their needs rather than look very carefully at the competencies of the profession seeking licensure, and acknowledging that professions' scopes can and do overlap. This is detrimental to the consumer, as they should have the right and opportunity to seek out the care of their choice.

States are beginning to see the value of Freedom of Access Laws because of the overlap of ACHC and Conventional Medicine. These Laws provide consumer protection by protecting their access to ACHC while providing safety and welfare provisions that were not previously there. Some states exempt ACHC from prosecution of the practice of medicine only (or propose to in states where Freedom Coalitions are attempting to pass these laws), while others exempt or propose to exempt ACHC from the practice of all health care professions.

This paper's scope is merely to point out the conflicts in Montana Law, which then should justify why ACHC practices should have the broader exclusion. This paper does not condone or justify that ALL ACHC practices should have a blanket exemption. It is important and necessary that the consumer be protected, and that issue is not in the scope of this paper.

¹ *Reforming Health Care Workforce Regulation: Policy Considerations for the 21st Century* (Report of the Taskforce on Health Care Workforce Regulation of the Pew Health Professions Commission, 1995)
<http://www.futurehealth.ucsf.edu/summaries/reforming.html>

Montana Law & ACHC

General Provisions: What are the penalties for practicing without a license?

Programs with Boards: Penalties for Practice without a license

37-1-317. Practice without license

(2) (a) Unless otherwise provided by statute, a board may file an action to enjoin a person from practicing, without a license, a profession or occupation for which a license is required by this title. In addition to the penalty provided for in 37-1-318, a person violating an injunction issued pursuant to this section may be held in contempt of court.

Violation of injunction -- penalty. A person who violates an injunction issued under 37-1-317 shall pay a civil penalty, as determined by the court, of not more than \$5,000.

(3) Unless otherwise provided by statute, a person practicing a licensed profession or occupation in this state without complying with the licensing provisions of this title is guilty of a misdemeanor punishable by a fine of not less than \$250 or more than \$1,000, imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of this chapter constitutes a separate offense.

Programs with NO Board: Penalties for Practice without a license

37-1-411. Practice without license -- investigation of complaint -- injunction -- penalties. (1) The department may investigate a complaint or other information received concerning practice by an unlicensed person of a profession or occupation governed by this part.

(2) The department may file an action to enjoin a person from practicing, without a license, a profession or occupation governed by this part.

37-1-412. Violation of injunction -- penalty. (1) A person who has been enjoined and who violates an injunction issued pursuant to a proceeding under this part may be held in contempt of court and shall pay a civil penalty, as determined by the court, of not more than \$5,000. Fifty percent of the penalty must be deposited in the general fund of the county in which the injunction is issued, and 50% must be deposited in the state general fund.

(2) A person subject to an injunction for practicing without a license may also be subject to criminal prosecution. In a complaint for an injunction or in an affidavit, information, or indictment alleging that a person has engaged in unlicensed practice, it is sufficient to charge that the person engaged in the unlicensed practice of a licensed profession or occupation on a certain day in a certain county without averring further or more particular facts concerning the violation.

(3) Unless otherwise provided by statute, a person practicing a licensed profession or occupation in this state without complying with the licensing provisions of this title is guilty of a misdemeanor punishable by a fine of not less than \$250 or more than \$1,000, imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of this chapter constitutes a separate offense.

ANALYSIS BY PROFESSION: IS THERE A CONFLICT?

MEDICINE: YES THERE IS A PROBLEM:

The issue here is treatment or correction of conditions, ailments, injuries or infirmities by any means. This is very broad and includes everything that ACHC practitioners do.

ACHC practitioners ARE practicing medicine without a license, and there is no exemption pertaining to ACHC care or non-licensed professionals except Christian Scientist.

37-3-102. Definitions

(8) "Practice of medicine" means the diagnosis, treatment, or correction of or the attempt to or the holding of oneself out as being able to diagnose, treat, or correct human conditions, ailments, diseases, injuries, or infirmities, whether physical or mental, by any means, methods, devices, or instrumentalities. If a person who does not possess a license to practice medicine in this state under this chapter and who is not exempt from the licensing requirements of this chapter performs acts constituting the practice of medicine, the person is practicing medicine in violation of this chapter.

37-3-301. License required -- kinds of licenses. (1) Before being issued a license, an applicant may not engage in the practice of medicine in this state.

37-3-325. Violations -- penalties. (1) A person practicing medicine in this state without complying with parts 1 through 3 of this chapter or an association or corporation (except a professional service corporation under Title 35, chapter 4)

practicing medicine in this state or a person, association, or corporation violating parts 1 through 3 of this chapter or an officer or director of an association or corporation violating parts 1 through 3 of this chapter is guilty of a misdemeanor and on conviction shall be fined not less than \$250 or more than \$1,000 or imprisoned in the county jail for not less than 90 days or more than 1 year, or both. Each daily failure to comply with or each daily violation of parts 1 through 3 of this chapter constitutes a separate offense.

DENTISTRY: YES, THERE IS A PROBLEM

The issue here is treatment of pain, deficiency, injury or physical condition of the teeth, jaws or adjacent structures. "Adjacent structures" is not defined. Does this include the musculature? If so, massage therapists are affected. Herbalists may work with a nutritional deficiency, craniosacral therapists may "unwind" the teeth by placing a finger on a tooth, or work with the cranial bones. Voice or music therapists may help the person "unlock" the holding pattern in their jaw through the use of music, toning or voice. A dance therapist may do the same by getting the person to move their body. These are just a few of the examples of how this scope limits ACHC. There are no exemptions relating to ACHC.

37-4-101. Definitions -- practice of dentistry

(f) diagnoses, professes to diagnose, prescribes for, professes to prescribe for, treats, or professes to treat disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures;

37-4-327. Practicing dentistry without license -- penalty. (1) Except as provided in 37-4-101 through 37-4-104 and this section, a person who, as principal, agent, employer, employee, or assistant, practices dentistry or who does an act of dentistry without having first secured a license to practice dentistry from the department entitling the person to practice in this state is guilty of a misdemeanor and on conviction in a district court may be fined an amount not less than \$500 or more than \$1,000 or be confined for a period not exceeding 6 months in the county jail.

PODIATRY: YES, THERE IS A PROBLEM

The issue here is treatment by all systems and means, while specifically talking about all structures of the foot and ankle. This scope limits bodyworkers, massage therapists, dance therapists, movement therapists, just to name a few. There are no exemptions relating to ACHC.

37-6-101. Definitions

Podiatry" means the diagnosis and treatment of ailments of the human functional foot and ankle as provided in 37-6-102.

37-6-102. Scope of practice. (1) A podiatrist may diagnose and treat ailments of the human functional foot and ankle by all systems and means. The functional foot is the anatomical foot and any muscle, tendon, ligament, or other soft tissue structure that is directly attached to the anatomical foot and that impacts on or affects the foot or foot function. The ankle is the articulation between the talus, tibia, and fibula and their related soft tissue structures.

37-6-104. Construction of chapter. Nothing in this chapter shall be construed as prohibiting the fitting, recommending, advertising, adjusting, or sale of corrective shoes, arch supports, or similar mechanical appliances, or foot remedies by retail dealers or manufacturers

37-6-301. License required for practice It is unlawful for a person to profess to be a podiatrist, to practice or assume the duties incident to podiatry, or to advertise in any form or hold himself out to the public as a podiatrist, or in a sign or advertisement to use the word "podiatrist" or "foot correctionist" or any other term, terms, or letters indicating to the public that he is holding himself out as a podiatrist or foot correctionist in any manner, without first obtaining from the board a license authorizing the practice of podiatry in this state, except under this chapter.

37-6-312. Penalty. Any person who shall knowingly violate any of the provisions of this chapter is guilty of a misdemeanor and on conviction shall be fined not less than \$250 or more than \$1,000 or imprisoned in the county jail for not less than 90 days or more than 1 year, or both fined and imprisoned.

PHARMACY: YES THERE IS A PROBLEM

It may be a little unclear what a drug is, because what is considered "any official compendium or supplement?" This could affect herbologists, and anyone using over the counter preparations. While certain stores are exempt and can sell them, practitioners would not be exempt from selling or using (dispensing) them. Also, anyone using or dispensing or selling hand held tools or other devices that mitigates, treats or prevents disease is also in violation. Disease is not defined here.

37-7-101. Definitions.

- (10) "Device" has the same meaning as defined in 37-2-101.
 37-2-101(2) "Device" means any instrument, apparatus, or contrivance intended:
(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans;
(b) to affect the structure or any function of the body of humans.
- (13) "Drug" means a substance:
 (a) recognized as a drug in any official compendium or supplement;
 (b) intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;
 (c) other than food, intended to affect the structure or function of the body of humans or animals; and
 (d) intended for use as a component of a substance specified in subsection (13)(a), (13)(b), or (13)(c).
- (26) "Practice of pharmacy" means:
 (a) interpreting, evaluating, and implementing prescriber orders;
 (b) administering drugs and devices pursuant to a collaborative practice agreement and compounding, labeling, dispensing, and distributing drugs and devices, including patient counseling;
 (c) properly and safely procuring, storing, distributing, and disposing of drugs and devices and maintaining proper records;
 (d) monitoring drug therapy and use;
 (e) initiating or modifying drug therapy in accordance with collaborative pharmacy practice agreements established and approved by health care facilities or voluntary agreements with prescribers;
 (f) participating in quality assurance and performance improvement activities;
 (g) providing information on drugs, dietary supplements, and devices to patients, the public, and other health care providers; and
 (h) participating in scientific or clinical research as an investigator or in collaboration with other investigators.
- 37-7-103. (Temporary) Exemptions.** Subject only to 37-7-401 and 37-7-402, this chapter does not:
 (5) prevent the sale of common household preparations and other drugs if the stores selling them are licensed under the terms of this chapter;
 (6) apply to or interfere with manufacture, wholesaling, vending, or retailing of flavoring extracts, toilet articles, cosmetics, perfumes, spices, and other commonly used household articles of a chemical nature for use for nonmedicinal purposes;
- 37-7-301. Unlawful practice.** Except as provided in 37-7-307 through 37-7-309, it is unlawful for a person to:
 (1) engage in the practice of pharmacy unless licensed by the board; or
 (2) assist in the practice of pharmacy unless registered by the board as a pharmacy technician.

NURSING: No, it appears that there is no conflict with ACHC practices.

ACHC practices do not appear to be in violation of the scope of practice for nursing. Nursing definitions are tightly written so as to apply to "nursing procedures" and "nursing theory."

37-8-102. Definitions.

- (6) "Practice of nursing" embraces the practice of practical nursing and the practice of professional nursing.
- (7) (a) "Practice of practical nursing" means the performance of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. The practice of practical nursing uses standardized procedures in the observation and care of the ill, injured, and infirm, in the maintenance of health, in action to safeguard life and health, and in the administration of medications and treatments prescribed by a physician, advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments.
- (b) These services may include a charge-nurse capacity in a long-term care facility that provides skilled nursing care or intermediate nursing care, as defined in 50-5-101, under the general supervision of a registered nurse.
- (8) "Practice of professional nursing" means the performance of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health, the prevention, casefinding, and management of illness, injury, or infirmity, and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (8):

OPTOMETRY: YES, THERE IS A PROBLEM

The issue here is visual training as well as "relief" of visual anomalies. Vision may change through neuromuscular treatment of the eye musculature, or even by correcting posture. Practitioners have instructed clients on the use of the exercises included in the Bates Method for better eyesight. There are many places where there is overlap by ACHC practitioners. There are no exemptions relating to ACHC.

37-10-101. Definitions -- practice of optometry. (1) The practice of optometry is the profession constituting the art and science of visual care and includes any one of the following acts:

(c) the application or prescription of ophthalmic lenses, contact lenses, prisms, orthoptics, visual training, and any physical, mechanical, or physiological therapy and the furnishing or application of any prosthetic or therapeutic devices for the correction or relief of visual anomalies;

37-10-301. License required for practice -- unlawful acts -- injunction

(1) A person may not:

(a) practice optometry in this state unless that person has first obtained a license;

37-10-313. Penalty for violations -- deposit of fines. A person who violates this chapter, except 37-10-104, or the rules of the board is guilty of a misdemeanor and on conviction shall be fined not less than \$200 and not more than \$500 or imprisoned in the county jail not exceeding 6 months or both fined and imprisoned.

PHYSICAL THERAPY: YES, THERE IS A PROBLEM

The definition of PT is very broad and includes all (or almost all) ACHC practices. It is so broad that it could describe many conventional practices as well. There is also a conflict in the way the law is written that makes it unclear as to how it could affect ACHC practices: on one hand it says that no business or profession should be limited (37-11-101) but the law then goes on to say that a license is required to practice (37-11-301). It is ambiguous at best. The terminology in the law has the potential to restrict Massage Therapists. While MTs may perform "only to the extent they do massage" massage has not been defined. However, any standard dictionary defines it as "to rub" in various permutations. Therefore, an issue could be made that any massage therapist exceeding hands-on rubbing is in violation of this law.

37-11-101. Definitions

(7) "Physical therapy" means the evaluation, treatment, and instruction of human beings to detect, assess, prevent, correct, alleviate, and limit physical disability, bodily malfunction and pain, injury, and any bodily or mental conditions by the use of therapeutic exercise, prescribed topical medications, and rehabilitative procedures for the purpose of preventing, correcting, or alleviating a physical or mental disability.

37-11-102. Exemptions. This chapter may not be construed to limit or regulate any other business or profession or any services rendered or performed in connection with another business or profession, including osteopathy, chiropractic, chiropractic physiotherapy, or massage therapists, to the extent they do massage.

37-11-104. Physical therapy -- evaluation and treatment. (1) Physical therapy evaluation includes the administration, interpretation, and evaluation of tests and measurements of bodily functions and structures; the development of a plan of treatment; consultative, educational, and other advisory services; and instruction and supervision of supportive personnel.

(2) Treatment employs, for therapeutic effects, physical measures, activities and devices, for preventive and therapeutic purposes, exercises, rehabilitative procedures, massage, mobilization, and physical agents including but not limited to mechanical devices, heat, cold, air, light, water, electricity, and sound

37-11-301. License required for physical therapist and assistant -- unauthorized representation as licensed therapist.

(1) A person may not practice or purport to practice physical therapy without first obtaining a license under the provisions of this chapter.

37-11-322. Penalties. Any person who knowingly violates any provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$50 or more than \$500 or by imprisonment in the county jail for a term of not less than 30 days or more than 6 months or by both such fine and imprisonment.

CHIROPRACTIC: YES, THERE IS A PROBLEM

While we agree that low-amplitude high-velocity thrusting forces of the joint intrudes on the scope of chiropractic and should not be performed by ACHC practitioners, the definition of chiropractic is too broad and includes ACHC practitioners. Adjustment and manipulation are not defined. "Manipulation of the... tissues of the body" includes the scope of massage therapy and bodywork, for example. If the ACHC practitioner picks up and moves an arm or rotates a finger, that is manipulation of the articulations. There are no exemptions for ACHC practices.

37-12-101. Definitions -- practice of chiropractic.

(3) "Chiropractic" is the system of specific adjustment or manipulation of the articulations and tissues of the body, particularly of the spinal column, for the correction of nerve interference and includes the use of recognized diagnostic and treatment methods as taught in chiropractic colleges but does not include surgery or the prescription or use of drugs.

37-12-301. Unlawful to practice without license. It is unlawful for a person to practice chiropractic in this state without first obtaining a license under this chapter.

37-12-324. Penalty for violation.

a fine of not less than \$100 or more than \$700 or by imprisonment in a county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment.

ACUPUNCTURE: We do Not think there is a problem, but there are conflicting statements

The scope of practice overlaps with ACHC (acupressure and remedies and herbs) and states that a license is required to practice, thereby prohibiting these practices by ACHC practitioners. However, the law goes on to state that it does not affect the occupation by an individual who does not represent they are an acupuncturist. These statements conflict since a license is required to practice.

37-13-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Acupuncture" means the diagnosis, treatment, or correction of human conditions, ailments, diseases, injuries, or infirmities by means of mechanical, thermal, or electrical stimulation effected by the insertion of solid needles. The term includes the use of acupressure and the use of oriental food remedies and herbs.

37-13-104. Partial exemptions. (3) This chapter does not affect the practice of an occupation by an individual who does not represent to the public that the individual is licensed under this chapter.

37-13-301. License required for practice. (1) A person may not engage in the practice of acupuncture in this state unless the person is licensed under the provisions of this chapter.

37-13-315. Enjoining unlawful practice. The practice of acupuncture in any way other than as defined in this chapter may be enjoined by the district court on petition by the board. In any such proceeding, it shall not be necessary to show that any person is individually injured by the actions complained of. If the respondent is found to have so practiced, the court shall enjoin him from so practicing unless and until he has been duly licensed. Procedure in such cases shall be the same as in any other injunction suit. The remedy by injunction is in addition to criminal prosecution and punishment.

37-13-316. Penalty. A person who violates any of the provisions of this chapter or the rules of the Montana state board of medical examiners is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding 6 months or by a fine not exceeding \$500, or both

SPEECH-LANGUAGE PATHOLOGY: MAY BE A PROBLEM

May possibly be a problem for music and voice therapists and coaches, if they use the language "voice therapist" or "voice therapy." Otherwise, it is written very specific to speech-language pathology, and may not pose a problem.

37-15-102. Definitions.

(7) "Practice of speech-language pathology" means nonmedical diagnosis, assessment, and treatment services relating to speech-language pathology as provided by board rule. – board rule does not appear to be clear

(8) "Speech-language pathologist" means a person who practices speech-language pathology and who meets the qualifications set forth in this chapter. A person represents to the public that the person is a speech-language pathologist by incorporating in any title or description of services or functions that the person directly or indirectly performs the words "speech pathologist", "speech pathology", "speech correctionist", "speech corrections", "speech therapist", "speech therapy", "speech clinician", "speech clinic", "language pathologist", "language pathology", "voice therapist", "voice therapy", "voice pathologist", "voice pathology", "logopedist", "logopedics", "communicologist", "communicology", "aphasiologist", "aphasiology", "phoniatrist", "language therapist", "language clinician", or any similar title or description of services or functions.

37-15-103. Exemptions – No exemptions for ACHC

37-15-301. License required

(2) No person may practice or represent himself as a speech-language pathologist or audiologist in this state unless he is licensed in accordance with the provisions of this chapter

37-15-322. Penalty. A person convicted of violating this chapter shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

PSYCHOLOGISTS: YES, THERE IS A PROBLEM

The language is a bit unclear: To step on the toes of the practice, one must do an action (engage in the practice) AND use the words "psychological" or "psychology." But, then below, it says the person cannot "engage in the practice" if they are not licensed. This could be problematic for people doing biofeedback, hypnotherapy. Of note is "the psychological aspects of physical illness, accident, injury..." (secondary to that are "treatment of mental and emotional disorders and disabilities" issues) Just about any practitioner works with the mental and emotional well-being of their clients, so this language is a problem.

37-17-102. Definitions.

(4) (a) "Practice of psychology" means the observation, description, interpretation, and modification of human behavior by the application of psychological principles, methods, and procedures for the purpose of eliminating symptomatic, maladaptive, or undesired behavior and improving interpersonal relations, work and life adjustment, personal effectiveness, and mental health.

(b) The practice of psychology includes but is not limited to psychological testing and evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning; counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, and behavior analysis and therapy; diagnosis and treatment of mental and emotional disorders or disabilities, chemical dependency, substance abuse, and the psychological aspects of physical illness, accident, injury, or disability; and psychoeducational evaluation, therapy, remediation, and consultation.

(5) A person represents to the public that the person is a "psychologist" when the person uses a title or description of services incorporating the words "psychologist", "psychological", "psychologic", or "psychology" and offers to render or renders psychological services defined in subsection (4) to individuals, groups, corporations, or the public, whether or not the person does so for compensation or fee.

37-17-104. Exemptions. This chapter does not prevent:

(1) qualified members of other professions, such as physicians, social workers, lawyers, pastoral counselors, or educators, from doing work of a psychological nature consistent with their training if they do not hold themselves out to the public by a title or description incorporating the words "psychology", "psychologist", "psychological", or "psychologic";

37-17-301. License required. A person may not represent himself to be a psychologist or engage in the practice of psychology unless he is licensed under this chapter.

37-17-313. Injunction for unlawful practice. The practice of psychology in any way other than as defined in this chapter may be enjoined by the district court on petition by the board. In any such proceeding, it shall not be necessary to show that any person is individually injured by the actions complained of. If the respondent is found to have so practiced, the court shall enjoin him from so practicing unless and until he has been duly licensed. Procedure in such cases shall be the same as in any other injunction suit. The remedy by injunction hereby given is in addition to criminal prosecution and punishment.

VETERINARY MEDICINE: YES, THERE IS A PROBLEM

Any person who "administers a... treatment of whatever nature... for the prevention, cure or relief of a pain... bodily injury... physical condition" is practicing veterinary medicine. You cannot work on animals at all – unless you are employed by the veterinarian.

In fact, an equine massage instructor was ordered to remove the words "health" from her teaching brochures.

37-18-102. Veterinary medicine defined. (1) A person is considered practicing veterinary medicine when he does any of the following:

(a) represents himself as or is engaged in the practice of veterinary medicine in any of its branches, either directly or indirectly;

(b) uses words, titles, or letters in this connection or on a display or advertisement or under circumstances so as to induce the belief the person using them is engaged in the practice of veterinary medicine. This use is prima facie evidence of the intention to represent oneself as engaged in the practice of veterinary medicine in any of its branches.

(c) diagnoses, prescribes, or administers a drug, medicine, appliance, application, or treatment of whatever nature or performs a surgical operation or manipulation for the prevention, cure, or relief of a pain, deformity, wound, fracture, bodily injury, physical condition, or disease of animals;

37-18-104. Exemptions -- rules. (1) This chapter does not apply to:

(6) This chapter does not prohibit an employee of a licensed veterinarian from performing activities determined by board rule to be acceptable, when performed under the supervision of the employing veterinarian.

37-18-301. License required. A person may not practice veterinary medicine or veterinary surgery in this state unless licensed and registered as required by this chapter, nor may a person practice veterinary medicine or surgery whose authority to practice is suspended or revoked by the board.

PHYSICIAN ASSISTANTS: APPEARS TO BE OK

The only way a person could be prosecuted under this is if they are licensed.

There is nothing in the statute about the unlawfulness of "representing" oneself as a PA.

37-20-401. Definitions.

(3) "Physician assistant" means a member of a health care team, licensed by the board, who provides medical services that may include but are not limited to examination, diagnosis, prescription of medications, and treatment under the supervision of a physician licensed by the board.

37-20-411. Unlawful acts. A person who performs acts constituting the practice of medicine in this state acts unlawfully if the person:

(1) has not been issued a license pursuant to this chapter and is not exempt from the licensing requirement of this chapter; or

(2) has received a license pursuant to this chapter but has not completed a duties and delegation agreement or a supervision agreement.

DIETICIAN: APPEARS TO BE OK

This law is a title protection act – not a licensure. There is no license required to practice. No practice is defined, or acts defined as to what a dietitian is. Therefore, as long as the person does not represent that they are a dietitian or call themselves one, they are ok.

37-21-301. Dietitian -- qualifications. No person may use, in connection with his name or place of business, the term "dietitian" or represent in any way that he is a dietitian unless he:

- (1) has been granted, prior to October 1, 1983, the right to use the term "dietitian" by an authorized agency; or
- (2) (a) is 18 years of age or older;
- (b) has satisfactorily completed appropriate academic requirements for the field of dietetics and related disciplines;
- (c) has received a baccalaureate or higher degree in dietetics or a related field from a college or university accredited by the Northwestern association of schools and colleges; and

(d) has satisfactorily completed a program of supervised clinical experience of not less than 6 months in length that is designed to train entry-level dietitians through instruction and assignments in a clinical setting. The program must meet minimum requirements established by **37-21-302. Registered dietitian -- qualifications.** A person may not use, in connection with the person's name or place of business, the term "registered dietitian" or represent in any way that the person is a registered dietitian unless the person:

- (1) has been granted, prior to October 1, 1983, the right to use the term "registered dietitian" by an authorized agency; or
- (2) (a) has fulfilled all the requirements set forth in 37-21-301(2);
- (b) has satisfactorily completed an examination for registered dietitians administered by an authorized agency; and
- (c) except as provided in 37-1-138, has satisfactorily completed the continuing education requirements as may be established by an authorized agency. no license required to practice – just title protection

SOCIAL WORK: APPEARS TO BE OK

While the definition is problematic, this is of no concern. This Law is a title protection act, meaning that a license is not required as long as the person does not represent themselves to be a licensed social worker.

37-22-102. Definitions. As used in this chapter

(5) "Social work" means the professional practice directed toward helping people achieve more adequate, satisfying, and productive social adjustments. The practice of social work involves special knowledge of social resources, human capabilities, and the roles that individual motivation and social influences play in determining behavior and involves the application of social work techniques, including:

- (a) counseling and using psychotherapy with individuals, families, or groups;
- (b) providing information and referral services;
- (c) providing, arranging, or supervising the provision of social services;
- (d) explaining and interpreting the psychosocial aspects in the situations of individuals, families, or groups;
- (e) helping communities to organize to provide or improve social and health services; and
- (f) research or teaching related to social work.

37-22-305. Representation to public as licensed clinical social worker -- limitations on use of title -- limitations on practice. (1) Upon issuance of a license in accordance with this chapter, a licensee may use the title "licensed clinical social worker". Except as provided in subsection (2), a person may not represent that the person is a licensed clinical social worker by adding the letters "LSW" or "LCSW" after the person's name or by any other means unless licensed under this chapter.

(3) Subsection (1) does not prohibit:

(a) qualified members of other professions, such as physicians, psychologists, lawyers, pastoral counselors, educators, or the general public engaged in social work like activities, from doing social work consistent with their training if they do not hold themselves out to the public by a title or description incorporating the words "licensed social worker" or "licensed clinical social worker";

37-22-411. Violations -- penalties. (1) It is a misdemeanor for a person to:

- (a) represent himself as a licensed social worker without being licensed under this chapter;

PROFESSIONAL COUNSELING: APPEARS TO BE OK

While the definition is problematic, this is of no concern. There is an exemption in 37-23-201(4) that protect AHC providers.

37-23-102. Definitions. As used in this chapter, the following definitions apply: 3) "Professional counseling" means engaging in methods and techniques that include:

- (a) counseling, which means the therapeutic process of:
 - (i) conducting assessments and diagnoses for the purpose of establishing treatment goals and objectives; or
 - (ii) planning, implementing, and evaluating treatment plans that use treatment interventions to facilitate human development and to identify and remediate mental, emotional, or behavioral disorders and associated distresses that interfere with mental health;

(b) assessment, which means selecting, administering, scoring, and interpreting instruments designed to assess an individual's aptitudes, attitudes, abilities, achievement, interests, and personal characteristics and using nonstandardized methods and techniques for understanding human behavior in relation to coping with, adapting to, or changing life situations;

(c) counseling treatment intervention, which means those cognitive, affective, behavioral, and systemic counseling strategies, techniques, and methods common to the behavioral sciences that are specifically implemented in the context

of a therapeutic relationship. Other treatment interventions include developmental counseling, guidance, and consulting to facilitate normal growth and development, including educational and career development; and

(d) referral, which means evaluating information to identify needs or problems of an individual and to determine the advisability of referral to other specialists, informing the individual of the judgment, and communicating as requested or considered appropriate with the referral sources.

37-23-201. Representation or practice as licensed clinical professional counselor -- license required.

(2) ...or by any other means, engage in the practice of professional counseling, or represent that the person is engaged in the practice of professional counseling, unless licensed under this chapter.

(4) Subsection (2) does not prohibit:

(a) a qualified member of another profession, such as a physician, lawyer, pastoral counselor, probation officer, court employee, nurse, school counselor, educator, chemical dependency counselor accredited by a federal agency, or addiction counselor licensed pursuant to Title 37, chapter 35, from performing duties and services consistent with the person's licensure or certification and the code of ethics of the person's profession or, in the case of a qualified member of another profession who is not licensed or certified or for whom there is no applicable code of ethics, from performing duties and services consistent with the person's training, as long as the person does not represent by title that the person is engaging in the practice of professional counseling;

OCCUPATIONAL THERAPY: May be OK, MAY BE A PROBLEM

While the definition is problematic, this is of no concern, as there is an exemption that protects ACHC providers. HOWEVER, what may be problematic is that it says that a person may not "render occupational therapy services" unless they are licensed. This appears to be in conflict.

37-24-103. Definitions.

(5) "Occupational therapy" means the therapeutic use of purposeful goal-directed activities and interventions to achieve functional outcomes to maximize the independence and the maintenance of health of an individual who is limited by disease or disorders, impairments, activity limitations, or participation restrictions that interfere with the individual's ability to function independently in daily life roles. The practice encompasses evaluation, assessment, treatment, consultation, remediation, and restoration of performance abilities that are limited due to impairment in biological, physiological, psychological, or neurological processes. Occupational therapy services may be provided individually, in groups, or through social systems. Occupational therapy interventions include but are not limited to:

(a) evaluating, developing, improving, sustaining, or restoring skills in activities of daily living, work or productive activities, including instrumental activities of daily living, and play and leisure activities;

(b) developing perceptual-motor skills and sensory integrative functioning;

(c) developing play skills and leisure capacities and enhancing educational performance skills;

(d) designing, fabricating, or applying orthotic or prosthetic devices, applying and training in the use of assistive technology, and training in the use of orthotic and prosthetic devices;

(e) providing for the development of emotional, motivational, cognitive, psychosocial, or physical components of performance;

(f) providing assessment and evaluation, including the use of skilled observation or the administration and interpretation of standardized or nonstandardized tests and measurements to identify areas for occupational therapy services;

(g) adaptation of task, process, or the environment, as well as teaching of compensatory techniques, in order to enhance performance;

(h) developing feeding and swallowing skills;

(i) enhancing and assessing work performance and work readiness through occupational therapy intervention, including education and instruction, activities to increase and improve general work behavior and skill, job site evaluation, on-the-job training and evaluation, development of work-related activities, and supported employment placement;

(j) providing neuromuscular facilitation and inhibition, including the activation, facilitation, and inhibition of muscle action, both voluntary and involuntary, through the use of appropriate sensory stimulation, including vibration or brushing, to evoke a desired muscular response;

(k) application of physical agent modalities, as defined in this section, as an adjunct to or in preparation for engagement in purposeful goal-directed activity;

(l) promoting health and wellness;

(m) evaluating and providing intervention in collaboration with the client, family, caregiver, or others;

(n) educating the client, family, caregiver, or others in carrying out appropriate nonskilled interventions;

(o) consulting with groups, programs, organizations, or communities to provide population-based services; and

(p) use of prescribed topical medications.

37-24-104. Exemptions. Nothing in this chapter prevents or restricts the practice, services, or activities of:

(2) a person who provides treatment, teaches living skills, designs orthotic or prosthetic devices, administers tests, or engages in other activities described in 37-24-103 but does not represent to the public that the person is an occupational therapist;

37-24-301. License required. (1) (a) No person may hold himself out as an occupational therapist or as being able to practice occupational therapy or able to render occupational therapy services in this state unless he is licensed as an occupational therapist under the provisions of this chapter.

NUTRITIONISTS: YES, THERE IS A PROBLEM (no one can give specific info)

While there is no "license required to practice" statement or section, the statement in 37-25-301 that says that "only a nutritionist can..." essentially has the same effect.

The way this law is written is that no one can give "specific" information about food, nutrients or supplements – only "general" information. "General" is defined, but "specific" is not and could be problematic. A practitioner tailoring an herbal / supplement or other nutrient program to an individual is in violation of this law.

37-25-102. Definitions.

(5) "General nutritional information" means information on:

- (a) principles of good nutrition;
- (b) foods to be included in a daily diet;
- (c) the essential nutrients needed by the body;
- (d) recommended amounts of these nutrients;
- (e) the action of these nutrients on the body;
- (f) the effects of deficiencies in these nutrients; or
- (g) foods and supplements that are good sources of essential nutrients.

(7) "Nutrition assessment" means the evaluation of nutritional needs of individuals and groups based on appropriate biochemical, anthropometric, physical, and dietary data in order to determine nutrient needs and to recommend appropriate nutritional intake, including both enteral and parenteral nutrition.

(8) "Nutrition counseling" means providing assistance and advice to individuals or groups in the selection of food and other sources of nutrients to achieve appropriate nutritional intake, based on:

- (a) the nutrition assessment;
- (b) the composition of food and other sources of nutrients; and
- (c) meal preparation consistent with cultural background and socioeconomic status.

37-25-301. Scope of dietetic-nutrition practice. Only a nutritionist can provide the following services:

- (1) assessing the nutrition needs of individuals and groups and determining resources and constraints in the practice setting;
- (2) establishing priorities and objectives that meet nutritive needs and are consistent with available resources and constraints;
- (3) providing nutrition counseling for any individual;
- (4) developing, implementing, and managing nutrition care systems; and
- (5) evaluating, adjusting, and maintaining appropriate standards of quality in food and nutrition services.

37-25-304. Exemptions from licensure requirements.

(6) a person from furnishing general nutritional information, including dissemination of literature, as to the use of food, food materials, or dietary supplements or from engaging in the explanation as to the use of foods or food products, including dietary supplements, in connection with the marketing and distribution of those products if he does not represent himself to the public as a nutritionist;

(7) a person from furnishing general nutrition information or disseminating literature if he does not represent himself to the public as a dietitian or a nutritionist; or

37-25-305. Representation to public as nutritionist -- limitation on use of title. A person may not represent to the public by any title, sign, or advertisement or description of services that the person is a nutritionist or a licensed nutritionist unless the person has been licensed under this chapter or has met the requirements of 37-25-102(9)(b).

NATUROPATHIC PHYSICIAN: May be OK, MAY BE A PROBLEM – VERY MURKY.

May be a Problem in that a license is required to practice, and if there is overlap, how do you specify what others can't do? Yet at the same time, it says that other practices are not prohibited, and lists which general areas are not prohibited. We're not sure, but there may be someone not covered by this statement, who practices ACHC.

37-26-103. Definitions

(7) "Naturopathic medicine", "naturopathic health care", or "naturopathy" means a system of primary health care practiced by naturopathic physicians for the prevention, diagnosis, and treatment of human health conditions, injury, and disease. Its purpose is to promote or restore health by the support and stimulation of the individual's inherent self-healing processes. This is accomplished through education of the patient by a naturopathic physician and through the use of natural therapies and therapeutic substances.

(9) "Naturopathic physician" means a person authorized and licensed to practice naturopathic health care under this chapter.

37-26-302. Exemptions. (1) This chapter recognizes that many of the therapies used by naturopathic physicians, such as the use of nutritional supplements, herbs, foods, homeopathic preparations, and such physical forces as heat, cold, water, touch, and light, are not the exclusive privilege of naturopathic physicians, and their use, practice, prescription, or administration by persons not licensed to practice naturopathic medicine is not prohibited by this chapter.

(2) This chapter does not restrict or apply to the scope of practice of any other professions licensed, certified, or registered under the laws of this state.

37-26-401. License required -- titles restricted -- enjoining unlawful practice. (1) Except as provided in 37-26-302, a person may not practice naturopathy without a valid and current license issued by the board as provided in this chapter.

(3) A violation of this chapter may be enjoined by the district court on petition by the board.

DIRECT ENTRY MIDWIFE: YES, THERE IS A PROBLEM

The definition is a problem with anyone working with a pregnant woman during pregnancy or postpartum. There are no exemptions that apply to other ACHC practices. Therefore, Doulas, Nannies, baby sitters, lactation specialists are all breaking this law. In addition, massage therapists and bodyworkers providing services during this time are also in violation.

37-27-103. Definitions. As used in this chapter, the following definitions apply:

(7) "Practice of direct-entry midwifery" means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or the postpartum period.

NO EXEMPTIONS APPLY TO US...

37-27-301. Unlawful to practice without license. It is unlawful for a person to practice direct-entry midwifery in this state without first obtaining a license under this chapter.

RESPIRATORY CARE: May be a Problem

The definition is a little murky – in saying that it is "care provided by a member of a profession..." – this could be enough so that it is not a problem. However, if it is interpreted to mean anyone doing any kind of respiratory care, certain procedures used by MTs/bodyworkers could be in question: cupping/percussion to clear the airways for example, lung compressions (NMT, NSI) to massage the lungs, and so on.

37-28-102. Definitions.

(3) (a) "Respiratory care" means the care provided by a member of the allied health profession responsible for the treatment, management, diagnostic testing, and control of patients with deficiencies and abnormalities associated with the cardiopulmonary system. The term includes but is not limited to:

(i) administration of pharmacological, diagnostic, and therapeutic agents related to respiratory care procedures that are necessary to implement a treatment, disease prevention, pulmonary rehabilitative, or diagnostic regimen prescribed by a physician;

(ii) transcription and implementation of the written or verbal orders of a physician regarding the practice of respiratory care;

(iii) observation and monitoring of a patient's signs and symptoms, general behavior, and physical response to respiratory care treatment and diagnostic testing, including determination of abnormal characteristics;

(iv) implementation of respiratory care protocols pursuant to a prescription by a physician; and

(v) initiation of emergency procedures prescribed by board rules.

(b) Respiratory care is not limited to a hospital setting but must be performed pursuant to a physician's order and under qualified medical direction. The term includes inhalation and respiratory therapy.

37-28-201. License required -- exceptions -- respiratory care not the practice of medicine. (1) Except as otherwise provided in this chapter, a person may not practice respiratory care or represent to the public that the person is a respiratory care practitioner unless licensed under the provisions of this chapter.

(2) This chapter does not prohibit:

(a) the practice of respiratory care that is an integral part of study by a student respiratory care practitioner;

(b) self-care by a patient or the gratuitous care by a friend or family member who does not purport to be a respiratory care practitioner; or

(c) respiratory care rendered in the course of an emergency.

(3) This chapter is not intended to limit, preclude, or interfere with the practice of other persons and health care providers licensed by the appropriate agencies of the state of Montana.

(4) This chapter may not be construed to permit the practice of medicine.

DENTURITY: APPEARS TO BE OK

The definition is very specific and does not pertain to any ACHC practices that we know of.

37-29-102. Definitions. (6) "Practice of denturistry" means:

(a) the making, fitting, constructing, altering, reproducing, or repairing of a denture and furnishing or supplying of a denture directly to a person or advising the use of a denture; or

(b) the taking or making or the giving of advice, assistance, or facilities respecting the taking or making of any impression, bite, cast, or design preparatory to or for the purpose of making, constructing, fitting, furnishing, supplying, altering, repairing, or reproducing a denture.

BARBERING, COSMETOLOGY, ELECTROLOGY, ESTHETICS, AND MANICURING: YES THERE IS A PROBLEM

Anyone caring for (touching) the hands, lower arms, feet, and lower legs or giving facial or scalp massages, or applying oils, lotions, or gels to the scalp, face, hands, or neck is in

violation of this chapter unless they are "authorized under the laws of this state to practice" (meaning licensure, which most ACHC practices are not) or the services are administered in a theatrical situation if employed to do so. So, massage and bodywork practices are in violation (unsure if other ACHC practices are affected). Not only that, the establishment where these services are provided must also be licensed by the state. Therefore, offices of ACHC practitioners providing these services are operating illegally. And, it is illegal to do housecalls unless the person is sent from a licensed establishment or the client is homebound or disabled.

37-31-101. Definitions.

(4) (a) "Electrology" means the study of and the professional practice of permanently removing superfluous hair by destroying the hair roots through passage of an electric current with an electrified needle. Electrology includes electrolysis and thermolysis. Electrology may include the use of waxes for epilation and the use of chemical depilatories.

(b) Electrology does not include pilethology, which is the study and professional practice of removing superfluous hair by passage of radio frequency energy with electronic tweezers and similar devices.

(6) "Esthetics" means skin care of the body, including but not limited to hot compresses or the use of approved electrical appliances or chemical compounds formulated for professional application only and the temporary removal of superfluous hair by means of lotions, creams, or mechanical or electrical apparatus or appliances on another person.

(7) "Manicuring" includes care of the nails, the hands, the lower arms, the feet, and the lower legs and the application and maintenance of artificial nails.

(8) "Practice or teaching of barbering" means any of the following practices performed for payment, either directly or indirectly, upon the human body for tonsorial purposes and not performed for the treatment of disease or physical or mental ailments:

(a) shaving or trimming a beard;

(b) cutting, styling, coloring, or waving hair;

(c) straightening hair by the use of chemicals;

(d) giving facial or scalp massages, including treatment with oils, creams, lotions, or other preparations applied by hand or mechanical appliance;

(e) shampooing hair, applying hair tonic, or bleaching or highlighting hair; or

(f) applying cosmetic preparations, antiseptics, powders, oils, lotions, or gels to the scalp, face, hands, or neck.

(9) (a) "Practice or teaching of cosmetology" means work included in the terms "hairdressing", "manicuring", "esthetics", and "beauty culture" and performed in salons or shops, in booths, or by itinerant cosmetologists when the work is done for the embellishment, cleanliness, and beautification of the hair and body.

(b) The practice and teaching of cosmetology may not be construed to include itinerant cosmetologists who perform their services without compensation for demonstration purposes in any regularly established store or place of business holding a license from the state of Montana as a store or place of business.

37-31-102. Exemptions. The provisions of this chapter do not prohibit:

(2) services by persons authorized under the laws of this state to practice dentistry, the healing arts, or mortuary science; or

(3) barbering, cosmetology, or esthetics services, including the application of masks, makeup, or other theatrical devices, in the course of or incidental to a theatrical or other visual arts production, including television or motion pictures, by persons employed or under contract to provide these services.

37-31-301. Prohibited acts. (1) Without an appropriate license issued under this chapter, it is unlawful to:

(a) practice barbering, cosmetology, electrology, esthetics, or manicuring for compensation;

(b) own, manage, operate, or conduct a school of barbering, cosmetology, electrology, esthetics, or manicuring;

(c) manage or operate a salon or shop or a booth; or

(d) teach in a school of barbering, cosmetology, electrology, esthetics, or manicuring.

(2) It is unlawful:

(a) for a person who owns, manages, or controls a salon or shop to employ or use an unlicensed person as a barber, cosmetologist, electrologist, esthetician, or manicurist;

(b) to operate a school of barbering, cosmetology, electrology, esthetics, or manicuring without complying with all of the regulations of 37-31-311;

(c) to practice barbering, cosmetology, electrology, esthetics, or manicuring in any place other than in a licensed salon or shop as provided in this chapter, except when a licensee is requested:

(i) by a customer to go to a place other than a licensed salon or shop and is sent to the customer from a licensed salon or shop; or

(ii) by a customer with a disability or homebound customer to go to the customer's place of residence; or

(d) to violate any of the provisions of this chapter.

37-31-302. License required to practice, teach, or operate salon or shop, booth, or school. (1) A person may not practice or teach barbering, cosmetology, electrology, esthetics, or manicuring without a license.

CLINICAL LABORATORY SCIENCE – APPEARS TO BE OK

Definitions do not apply.

ADDICTION COUNSELING – APPEARS TO BE OK

The definitions are narrowly written and the exemptions would cover ACHC practices.

37-35-102. Definitions.

(2) "Addiction" means the condition or state in which an individual is physiologically or psychologically dependent upon alcohol or other drugs. The term includes chemical dependency as defined in 53-24-103.

(4) "Licensed addiction counselor" means a person who has the knowledge and skill necessary to provide the therapeutic process of addiction counseling and who is licensed under the provisions of this chapter.

37-35-201. License required -- exceptions. (1) Except as otherwise provided in this chapter, a person may not practice addiction counseling or represent to the public that the person is a licensed addiction counselor unless the person is licensed under the provisions of this chapter.

(2) This chapter does not prohibit an activity or service:

(a) performed by a qualified member of a profession, such as a physician, lawyer, licensed professional counselor, licensed social worker, licensed psychiatrist, licensed psychologist, nurse, probation officer, court employee, pastoral counselor, or school counselor, consistent with the person's licensure or certification and the code of ethics of the person's profession, as long as the person does not represent by title that the person is a licensed addiction counselor. If a person is a qualified member of a profession that is not licensed or certified or for which there is no applicable code of ethics, this section does not prohibit an activity or service of the profession as long as the person does not represent by title that the person is a licensed addiction counselor.

SANITARIANS – May be a problem

The definition to practice the profession is a little unclear – the parts of the definition are all joined by "and" which could mean that all (a, b & c) have to occur before the person is practicing. However (c) is problematic if they are allowed to stand alone, as ACHC educators would need to be associated with a college or university.

37-40-101. Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(3) "Practice the profession of sanitarian" means:

(a) giving advice on or enforcing compliance with state and local regulations applicable to local government jurisdictions and programs concerning food service, food processing, public accommodations, trailer courts, campgrounds, day-care centers, schools, swimming pools and spas, air pollution, solid and hazardous waste collection and disposal, sewage treatment and disposal, vector control, underground storage tanks, drinking water, land subdivision, and milk sanitation;

(b) cooperating with government agencies on matters of public and environmental health, including epidemiological investigations and emergency response to investigations; and

(c) providing educational and training programs in environmental standards and public health.

(4) "Registered sanitarian" means a sanitarian licensed under this chapter.

(5) "Sanitarian", within the meaning and intent of this chapter, shall mean a person who, by reason of the person's special knowledge of the physical, biological, and chemical sciences and the principles and methods of public health acquired by professional education and practical experience through inspectional, educational, or enforcement duties, is qualified to practice the profession of sanitarian.

37-40-102. Exemptions. . DO NOT COVER ACHC PRACTITIONERS

Persons exempt from the requirements of this chapter are:

(1) any person teaching, lecturing, or engaging in research in environmental sanitation, but only insofar as such activities are performed as part of an academic position in a college or university;

37-40-301. License required. A person may not practice or offer to practice the profession of sanitarian as defined in this chapter or hold himself out in any manner to be a licensed sanitarian unless the person is licensed and registered under the provisions of this chapter.

OUTFITTERS AND GUIDES – May be a problem

ACHC practitioners may not be allowed to run outdoor groups. The punctuation of the definition makes it unclear whether an outfitter simply provides equipment, or whether to be considered an outfitter, the purpose has to be for the "person to hunt, trap, capture..." In short, it may or may not be a problem.

37-47-101. Definitions

(7) "Guide" means a person who is employed by or who has contracted independently with a licensed outfitter and who accompanies a participant during outdoor recreational activities that are directly related to activities for which the outfitter is licensed.

(11) "Outfitter" means any person, except a person providing services on real property that the person owns for the primary pursuit of bona fide agricultural interests, who for consideration provides any saddle or pack animal; facilities; camping equipment; vehicle, watercraft, or other conveyance; or personal service for any person to hunt, trap, capture, take, kill, or pursue any game, including fish, and who accompanies that person, either part or all of the way, on an expedition for any of these purposes or supervises a licensed guide or professional guide in accompanying that person.

37-47-301. License required -- services performed -- standards. (1) A person may not act as an outfitter, guide, or professional guide or advertise or otherwise represent to the public that the person is an outfitter, guide, or professional guide without first securing a license in accordance with the provisions of this part.

ATHLETIC TRAINERS – YES, THERE IS A PROBLEM

According to the Definition, any ACHC practitioner working with athletes to prevent or work with injuries is in violation except for massage therapists when they provide massage **only**. An ACHC practitioner may educate, but no more than that.

HOUSE BILL NO. 665

Section 2. Definitions.

(4) "Athletic training" means the practice of prevention, recognition, assessment, management, treatment, disposition, and reconditioning of athletic injuries. The term includes the following:

(a) the use of heat, light, sound, cold, electricity, exercise, reconditioning, or mechanical devices related to the care and conditioning of athletes; and

(b) the education and counseling of the public on matters related to athletic training.

Section 6. Representation to public -- practice -- exemptions. (1) (a) Except as provided in subsection (2), an individual may not practice athletic training without a license.

(2) This section does not prohibit:

(b) an educator or an information specialist from providing general information regarding prevention of athletic injuries;

(f) a massage therapist from providing massage; or

THE FOLLOWING PROFESSIONS DO NOT APPLY TO ACHC:

PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAMS

PUBLIC ACCOUNTANTS

REAL ESTATE BROKERS AND SALESPERSONS

TIMESHARE SALES

REAL ESTATE APPRAISERS

PRIVATE INVESTIGATORS AND PATROL OFFICERS

ATTORNEYS AT LAW

ARCHITECTURE

LANDSCAPE ARCHITECTURE

ENGINEERS AND LAND SURVEYORS

ELECTRICIANS AND ELECTRICAL SAFETY

PLUMBERS

CONSTRUCTION BLASTING

ELEVATOR CONTRACTORS, MECHANICS, AND INSPECTORS

ATHLETIC AGENTS

Previous ACHC Freedom Legislation in Montana

In 2007, an ACHC Freedom Bill (HB445) was introduced during the 2007 Legislative by Rep. Janna Taylor (R) Dayton (in the Flathead). The bill would have defined alternative medicine and would have exempted a practitioner from disciplinary action because of practicing alternative medicine. In other words, if a doctor offered alternative medicine, his own board could not discipline him/her for doing so.

On the surface, this sounds really good, but it wasn't for 2 reasons:

According to those testifying, the ACHCB thought that the definition of "Alternative Health Care" was poorly defined. Secondly, no professional board wants to lose control over their licensees. For these two reasons the bill died very quickly.

As far as ACHC practitioners go though, this bill did nothing to protect them – only those already considered mainstream... so this was not a true ACHC Freedom Bill. It would have only given access to mainstream medical practitioners to practice ACHC practices.

Current (2009) ACHC Freedom Legislation

Legislation has been drafted for the 2009 Legislative session. As drafted, it will address the issues included in this report:

1. It will add more protection of the public and protect their right to seek out the (non-harming) alternative health care of their choice.
2. It does not re-define "alternative health care."
3. It does not take power away from already existing boards to regulate their licensees.
4. It sets a new standard for practitioner prosecutions: the assumption that a trained practitioner is causing harm because they are not licensed is no longer valid, which reduces punitive prosecutions toward trained ACHC practitioners.

The Boards:

Some boards are very good about following the law and being judicious in its enforcement of unlicensed practice. But not every board is perfect. Below is an outline of complaints. Full Board minutes follow.

Boards that behaved well would continue to be able to sanction people for using Protected language and the like.

Disclaimer: since the only information used is based on the on-line minutes the opinions in the commentary are based on that information only. The author of the additional commentary is not at fault for the errors or omissions contained in the minutes.

Minutes on-line were used to get this information: Board minutes are on-line for 2007 and part of 2008.

In delineating board behavior, sometimes the minutes of the meetings are very cryptic and not clear.

For example, a woman was sanctioned by the Alternative Health Care Board for offering "voluntary midwife services." But was that language actually used by the woman, or was this how the board characterized the behavior? This is not clear.

**Examples are listed below followed by a Summary that includes some statistics
STATS ARE IN THE SUMMARY:**

1. There did not seem to be specific evidence of abuse by the following boards: Dentistry, Nursing, Occupational Therapy, Physical Therapy, Chiropractors.
2. The Alternative Health Care Board cannot sanction someone because of exemption language in §37-26-302, MCA which states that the use of nutritional supplements and homeopathic preparations is not the exclusive privilege of naturopathic physicians. Since they cannot do this, they turned the person over to the Board of Medical Examiners. (10/24/07) Once the Board of Medical Examiners found the person in violation of the practice of medicine, then the AHCB found the person in violation of the Practice of Naturopathic Medicine (the section stipulating that a license is required to practice) (4/30/2008)
While the person may have been in clear violation of the Practice of Medicine, this person was not in clear violation of the naturopathic statutes that they were sanctioned under, based on the exemption language in the statutes concerning the use of nutritional supplements and homeopathic preparations.
3. Board of Medical Examiners – most complaints brought by the Board are valid, but a few are questionable. Most of these violations pertained to the practice of nutrition. In some cases the minutes are not clear exactly what the violation is – practicing nutrition or using the word "nutritionist." Our concern is that "nutrition" and nutritional" are common words and deserve to be in the public domain for usage, much like the words "diet" or "dietary," as long as the person makes it clear that they are not licensed.
Claims concerning Nutrition:
 - a. (7/27/2007 item A & 9/21/2007 item B) - it was implied on the first date that the board thought someone was portraying herself as a nutritionist on her website. The person was unaware of this and said she would fix it. On 9/21 she was sanctioned for practicing nutrition without a license. It was not clear what exactly the violation was, however a board member stated that *"she is still making the same claims regarding nutrition."* Evidently she was not using the term "nutritionist" – see above for comments.

- b. (1/19/2007 item #12) – person was sanctioned for holding himself out as a "certified sports nutritionist" If this was the language that the person used, then the person was rightly sanctioned.

Claims concerning use of protected terms:

- a. (9/21/2007 item A & 11/16/2007 item #A) The person used the term "acupuncture points" and was rightly sanctioned. It appears on the surface that we are in conflict: why sanction for "acupuncture" but not "nutrition?" acupuncture is a specific modality, but nutrition is not – it is a term to describe many professions and many ways to discuss food intake. The second half of the complaint is similar to (Nutrition – a) above.

Claims concerning herbs

- a. (11/16/2007 b-d & 3/28/2008 c) Persons using herbal remedies were sanctioned. It is not clear that harm was done – no clear testimony was given. But the herbalists were shut down. If there was harm performed then the board was correct in its actions. If the person clearly diagnosed (which is also not clear), then the board was correct in its actions. However, under health freedom if the persons had followed the law, sanctions would not be possible.

- 4. Board of Barbers & Cosmetologists: This board is not even a health care board, yet they are the most heinous offenders of sanctioning unlicensed health care providers with no cause. If Health Freedom were in place, there would be no sanctions: These include just a few of the complaints, but most elements were the same: bodywork practitioners accused of practicing illegally.

1. *16 complaints were filed: Almost all complaints were board-generated complaints. No consumers stepped forward, no consumers were harmed. Many were based upon services provided / outlined on websites.*
2. *In many instances the practitioners discussed their competency and their training and qualifications to perform the services.*
3. *In many instances, the practitioners tried to make the case that there intention was not to beautify the skin, but to bring healthful effects to the whole person.*
4. *At one point, the Board counsel tried to diplomatically talk the board out of their abusive behavior. The board declined to do so, and sanctioned the practitioners.*
5. *If the practitioners had known about all of the elements of health freedom, particularly the disclosure, they probably could have successfully defended themselves in court.*

Other Examples:

- a. (10/22/2007) Board member states that aromatherapy – essential oils placed on the skin is an application of a cosmetic to the skin.
- b. (1/28/2008) The board counsel asks the board to reconsider its policy: "Board counsel stated to the Board that these issues keep coming up and will continue to do so the practice of massage therapy is changing and they are being taught these functions in the massage schools. She pointed out that other states are recognizing this issue and are modifying their rules and laws with respect to esthetics and many seem to be more lenient than Montana. She asked the Board if they wanted to modify their previous position and allow massage therapists to perform some of the services that are within the scope of this Board." The board declined to do so.
- c. (1/28/07) The spa owner specifically states her spas do not beautify the skin, exfoliate, or treat the skin; they are purely for relaxation, basically an alternative medicine spa. Board counsel stated that this is where things get difficult as some of the services they provide that have health benefits also beautify the skin. Note: The only element missing from a successful defense would be a disclosure to the clients. The person carefully states that what she was doing was within the scope of her practice, and did not constitute the act of esthetics. Yet, the board ignored these statements.

SUMMARY OF PROFESSIONAL BOARDS' COMPLAINTS AGAINST UNLICENSED ALTERNATIVE & COMPLEMENTARY HEALTH CARE PRACTITIONERS

Disclaimer: since the only information used is based on the on-line minutes the opinions in the commentary are based on that information only. The author of the additional commentary is not at fault for the errors or omissions contained in the minutes.

In some cases it was evident that a person licensed in another state was trying to practice in Montana without a license – those cases were ignored.

Also ignored were cases involving licensed persons being disciplined by their own board and 1 case that involved a person who was licensed by one Montana board being sanctioned by another Montana Board.

These cases reflect only those cases brought against unlicensed individuals who do not hold a Montana license.

Summary:

Board:	Cases	Harm	Would be a violation under Health Freedom
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Medical Examiners	10	4 (3 questionable)	7 ½ (5 questionable)
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Notes: 3 cases were concurrent cases against the same person

The questionable harm caused was against the same person and it is not very clear that harm was done.

HF Violations: 2 were tattoo removal (surgery), ½ of a complaint concerned using a protected term (acupuncture), 2 concerned practicing nutrition and it wasn't clear that the people were using protected titles or not. The other 3 were the questionable cases listed under harm.

Alt. Health Care	7 (5)	0 (?)	4 (2 questionable) (?)
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Notes: 2 complaints did not have board minutes, so no idea what those cases were about – so other numbers do not reflect those 2 cases. 1 case was the person was already sanctioned by the Medical Board and this board piled on for the same offense. 2 complaints were filed against the same person for the same offense. This happened in 2 instances.... So there really were only 5 cases total

Harm: it was not clear the person sanctioned by the medical board caused harm.

HF Violations: 2 questionable cases involved the same person: it was not clear if she used a protected term (midwife) or not. The other 2 concerned the same person who used a protected term.

Chiropractic:	1		1
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Note: The person used a protected term, no harm was reported.

Cosmetology:	16	0	0
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Notes: Almost all cases were board generated, no reports of harm and many were as a result of looking at websites.

REFORMING HEALTH CARE WORKFORCE REGULATION

Policy Considerations for the 21st Century

Report of the Taskforce on Health Care Workforce Regulation

December 1995

Prepared by: Pew Health Professions Commission

Selected Passages from the report

Overview, Commentary, & Conclusion prepared by the Montana Health Freedom Coalition

Overview:

The MHFC contends that licensure boards in some cases have properly carried out their duty in sanctioning unlicensed practitioners in order to protect the public and in other instances have abused their power to protect their scope and not the public.

Boards have sanctioned practitioners not because there is a danger to the public, but because they can: the practitioner has, while responsibly carrying out the competencies of their practice, have intruded into the broadly written definitions of professional scopes of practice.

Sanctioning these practitioners is detrimental to the public as it decreases competition, creates monopolies where access to an alternative method of care is not available, and increases costs.

Availability to the public of these unlicensed services is crucial, as it is imperative for public safety: more and more consumers are turning to alternative and complementary health care as it costs less than conventional care. It seems prudent to ensure that practitioners, working responsibly and within their knowledge base, are available to the public to help guide them through this maze of options safely.

The Pew Report focuses on reforming health care regulation. It clearly makes many of our points for us. Below are selected passages:

Commentary: The passage below points out that licensure is more political than it is about competencies. Our experience has been that scopes are defined with the input of all the other professions, without a focus on competency domains. Thus, if a profession wants to be licensed, it more often than not must compromise its scope to become licensed. This is one reason many unlicensed practices do not want to enter into the legislative fray to obtain the legitimacy and protections afforded by licensure.

"The lack of uniformity in language, laws, and regulations between the states limits effective professional practice and mobility, confuses the public, and presents barriers to integrated delivery systems and the use of telemedicine and other emerging health technologies. These difficulties transcend state boundaries and call for standardization across the individual states. As Safriet (1994) writes:

Since health and illness are for the most part biologically and physically based, with some psychological and emotional components, it is not at all clear why licensure laws—that is, proxies for competency—should vary according to political boundaries rather than competency domains."

— Introduction p. vi

Commentary: The next passages point out the issues that exist when licensure is enacted. Our intention is not to indict the concept of licensure (many of us support licensing our professions), but to point out its problems: barriers to affordable and accessible care, restriction of practice among those who share overlapping competencies, economic struggles, questionable consumer protection, turf wars and power struggles. We believe these issues not only exist between licensed professions, but between those who are licensed and those who are not.

"Current statutes grant broad, near-exclusive scopes of practice to a few professions and "carved-out" scopes for the remaining professions. These laws erect unreasonable barriers to high-quality and affordable care. The need for accessible health care calls for flexible scopes of practice that recognize the demonstrated competence of various practitioners to provide the same health services."

— Introduction p. vii

"Scopes of practice also draw the boundaries among the professions, creating exclusive domains of control over the delivery of specific services. Many professions argue that this exclusivity denies them the right to provide services they are competent to render (Safriet, 1994). The result has been a flood of "border wars" or "turf battles" between professions." – Chapter 3 p. 9

"The varying objectives and levels of specificity found in different professions' scopes of practice are more than frustrating; they have encouraged a system that treats practice acts as rewards for the professions rather than as rational mechanisms for cost-effective, high quality and accessible service delivery by competent practitioners. Although couched in consumer protection language, scopes of practice are not always based on the demonstrated ability to provide services that are potentially harmful if not performed competently. Rather, they are written to define differences among professions. Scope of practice battles have come to resemble contests for more patients, more status and power, more independence, and more money." – Chapter 3 p. 10

Commentary: The next passage makes the case for health freedom. Licensure at its worse penalizes other professionals who are working within their competency and harms emerging professions.

"The inflexibility disregards the competence of other professions to provide the same or similar services safely (Office of Technology Assessment, 1986; Begun and Lippincott, 1993). It extends to individual careers when health professionals are barred from developing skills they could incorporate competently into their practices. Further, when licensure and scopes of practice are considered desirable and legitimizing — but ultimately difficult to achieve — the development of new professions is stymied." – Chapter 3 p. 10

Commentary: The following passages point out the consumer and cost issues resulting from an inflexible system, including those cost associated with professions protecting their turf.

"Beyond this inflexibility, the inefficiencies of our regulatory system result in increased costs. Economists view licensure laws as state-enforced service monopolies that decrease competition, increase costs, and decrease access for the consumer, with the most restrictive licensure statutes contributing the most economic harm to the consumer (Hall, 1993). Health care delivery organizations have recognized that increased costs can be attributed in part to the limited number of professions who can competently provide the same care less expensively (Nichols, 1992)." – Chapter 3 p. 11

"The cost of services is also increased by professional turf battles. As is evident today in professional journals, at professional meetings, and in state legislative offices across the country, many professions are investing significant amounts of time and money to garner legislative support for new or broader scopes of practice. The professions with established scopes of practice are spending comparable, if not more, resources defending their scopes from threats of invasion." – Chapter 3 p. 11

Commentary: The last passage points out what an ideal system would look like.

Professionals should be allowed and encouraged to provide services to the full extent of their current training, experience and skills. A regulatory system that maintains its priority of quality care, while eliminating irrational monopolies and restrictive scopes of practice would not only allow practitioners to offer the health services they are competent to deliver, but would be more flexible, efficient, and effective. – Chapter 3 p. 13

Conclusion:

The Montana Health Freedom Coalition believes that a new way of looking at the regulation of professions is needed that addresses these issues raised in the report. We contend that licensure is not the only method of regulation that protects the public, and the report's passages above point out that licensure isn't always about public protection. In our view, ideal regulation would include a method that provides consumer access to a variety of low or no risk health care options, care that lowers consumer costs, and in a responsible way that protects the public. The Montana Consumer Health Freedom and Access Act is such a regulatory option.

Professions that could be affected by a Freedom of Access Law

acupressure
anthroposophy
aroma therapy
Asian bodywork therapies
ayurveda
biofield therapy
bodywork
colostrum therapy
cranial sacral therapy
crystal therapy
creative arts therapies
culturally traditional healing
practices
detoxification practices and
therapies
energetic healing
flower essences
folk practices
gerson therapy
healing touch

herbology or herbalism
homeopathy
therapeutic massage
meditation
mind-body healing practices
nondiagnostic iridology
noninvasive instrumentalities
polarity therapy
reflexology or zone therapy
therapeutic touch
traditional Tibetan practices
individual biological therapies use of the
physical forces of heat, cold, water, touch,
and light
healing practices that use food, food
supplements and nutrients
somatic practices including movement
therapies and educationally-based healing
practices.

or any combination of such practices

According to the Texas Health Freedom Coalition, the above categories of practices represent at least 1200 distinct professions.

In addition there are many other professions affected in the health and fitness fields such as yoga, personal training and fitness training.

Fiscal note issues

As you know, death by fiscal note occurs: the very boards that are trying to kill the bill contribute to the fiscal note. The boards are doing all they can to do so, including inflating costs, deliberately undermining the purpose of the bill by having each board make rules, and prior to this note, grossly overestimating how many complaints would actually be filed.

The current Fiscal Note is actually a revised fiscal note.

The original fiscal note was reduced by 69.3% (\$563,865) once we pointed out that Minnesota – with 5 times the population – averaged only 17 cases per year, not the 64 or 128 they were anticipating.

The 3 other states that enacted bills most similar to this one appropriated \$0 (Zero dollars). One, California, did not even consider the bill to be a fiscal/revenue bill. This alone, should tell you something about how it was implemented elsewhere.

The current fiscal note attributes all of the costs of the bill to rule-making.

Therefore, it is fair to question the rule-making process and to discuss rule-making as it pertains to the bill.

We maintain that no new rule making is required at all.

1. A current complaint process is in place, which is carried out through the Montana Administrative Procedure Act (MAPA), which applies to any and all complaints. It is standardized and is not board specific, so boards do not need to make individual rules.
2. The only change in this process is in the central question of the complaint. Before the question was: "are you practicing without a license?" and now the question will be: "are you practicing within the parameters of the exemption?" This change does NOT require new rule making.
3. If the boards insist that new rules must be made to clarify sanctioning unlicensed practitioners, our question is: under what authority were these boards previously sanctioning unlicensed practitioners?
We found **NO** rules that allow them to sanction an unlicensed practitioner, yet they have been sanctioning these practitioners all along. As such, there is no need to now make rules, when the same process will be used.

One major complaint of the opponents is that licensees will have to pay for the enactment of SB287. We maintain that Licensees are already paying for boards to sanction unlicensed practitioners, that SB287 will streamline the process, and will save them money as the number of complaints is reduced. We believe that the implementation costs are grossly exaggerated and the manner of implementation is wasteful and defeats the purpose of the bill. Our contention is that licensees should be questioning the Department, not us, for wasting their money by suggesting that the bill be implemented in this manner. Our plan is to save them money, not waste it.

But let's entertain the idea that maybe some rules need to be made:

Individual Boards do NOT need to make rules.

1. **To do so would undermine the intent of the bill, which is to standardize procedures for all boards.** Therefore, individual rule-making would defeat the purpose of the bill.
2. Rules are standardized into model rules, and there are no provisions in the underlying legislation (this bill) allowing for individual programs to develop or permit special procedural rules, according to ARM 24.2.101(3)
3. There are no rules in Chapter 24 of the ARM – the chapter with the pertinent boards - that require any rule changes: Search of the ARM for "unlicensed" and "not licensed" did not bring up any references in Chapter 24 that would need changes to be made (that took 30 minutes to find out).
4. There are no clear rules in each profession's rules concerning filing complaints against licensed persons, much less unlicensed ones.
Only 7 of the 21 boards have "complaint procedures" – which apply **only** to licensees. If they already have been sanctioning persons without a license, under what authority are they doing so, and why would they suddenly need to change their rules? FYI, this complaint procedure is very general, which outlines that once logged in, the complaint will be sent to a licensee for a response. Then both the complaint and response are considered by a screening panel for a determination. If a reasonable cause violation is found, then MAPA shall be followed.
What about the other 14 boards who don't have a complaint procedure? – under what authority are they accepting complaints? (All of this took about 1 hour to find out)
5. There are no relevant rules that go with the statutes pertaining to unlicensed practice: 37-1-317, 318, 411, and 412.
6. Either boards are operating illegally, or there is some mechanism in place that allows them to sanction unlicensed persons – that would be the standardized mechanism under MAPA. If boards are operating illegally according to their own rules (and statutes), it is not a good reason to fail SB287, just to avoid rule-making to bring the boards into compliance, ***if rule-making is necessary at all.***

The costs of rule-making are dramatically inflated.

1. We question whether or not rules even need to be written (see above)
2. Each board does not need to make its own rules (see above)
3. We found out a lot just by surfing the ARM – rules are written in a standardized way from board to board, so any rules pertaining to unlicensed practice would not be placed willy-nilly throughout the rules. Further, the website is very searchable, and very well organized. It took us only a few hours to determine how the rules are organized, found that there were no relevant rules concerning unlicensed practice, found the complaint procedures, and read through the unprofessional conduct rules for each profession to see if anything relevant could be found. As a result of that little experiment, we doubt that 40 hours per board (880 hours) is needed to go through the rules and develop new ones. And as we said above, the rules should be standardized into one section ***if rules even need to be written at all.***
4. One doc may be prepared compiling comments and distributed to all boards, saving on attorney fees, ***if rules even need to be written at all.***
5. As a cost-cutting measure to the state, it makes no sense to send notifications via mail when email will do (unless required to do so by statute - and I couldn't find any such requirement).

Legislation Enacted in Other States:

2001 California SB577 – California Complementary and Alternative health Care Practitioners

Only exempts from practicing medicine, not other professions – does not create oversight organization, does create an exemption within existing law.

It as carried by the President Pro Tempore (a Democrat) of the Senate.

A version of this model is now used by most health freedom groups and has been adapted for use as a template by the National Health Freedom Action. National groups have expanded it to include exemptions from other professions. This template was used to create Montana's bill.

1999 Minnesota Statute 146A – Minnesota Freedom of Access to Complementary and Alternative Health Care Practitioners.

This is the other main model: creates an oversight organization and more bureaucracy. A few years ago, the governor tried to eliminate the oversight organization because there were too few complaints. The legislature refused to do so. No other state has implemented this type of model – Rhode Island used much of the same language as the rest of the MN bill, but stopped short of setting up a separate office. According to Health Freedom Advocates in California, they opted not to incorporate an oversight organization based on Minnesota's experience when they developed their bill.

2005 Louisiana Revised Statutes 20-37 VI-B – Revised again in 2008.

The first version enacted only pertained to herbs, food supplements and the like.

In 2008, other unlicensed practices were added under "lifestyle modifications."

2003 – Rhode Island Statute 23-75 – Unlicensed Health Care Practices

As above, uses much language from Minnesota, but stops short of creating an oversight board.

1976 – Idaho

Idaho Exemptions to the Medical Practice Act (54-1804): "Unlicensed Practice – penalties and remedies relating to unlicensed practice" are either enacted or amended to create health freedom, which provides for prohibited acts and informed consent.

2005 – Idaho

Enacts a licensure bill for naturopaths(54-5103, 54-5106, 54-5107). As part of the provisions of that bill, it seems to further clarify state law and formalized the disclosure.

1917 – Oklahoma: law is passed to give the allopathic medical board control over "drugless healing arts"

1920 – Oklahoma: State referendum repeals the Oklahoma Law.

Due to this referendum, licensed professions are considered definitions of scope of practice laws only and do not grant any licensing board jurisdiction over any healing arts practice other than the one defined by the law for that particular healing art.

1994 – Oklahoma: allopathic medical practice acts are modernized: 59-480. Health freedom is re-affirmed.

Bills Introduced:

Texas has introduced a bill for 2009 (HB 40) – adapted from national template

New Mexico introduced a bill for 2009 (HB664) – more clearly shows how bill is an exemption bill.

Bills introduced in 2008: ๐๙

Colorado (HB 1158) – adapted from national template

Louisiana (see above)

Maryland (SB 119) – adapted from national template, with simpler wording.

North Carolina (HB 1358) – adapted from national template

Washington (SB 5775)

Iowa (Access to Wellness bill) – Just introduced, no bill number

New Mexico (HB644) – has passed out of 1 house

Other states have either introduced legislation in the past and/or are currently working on introducing legislation but it hasn't happened yet. Most seem to follow the national template:

Florida (2004) – adapted from California

Georgia (2005) – adapted from California

Hawaii (SB 739 – 2007) – adapted from California

Illinois (HB 3389 – 2007) – adapted from national template with more detailed disclosure

Iowa (SF 478 – 2007) – it was killed as legislators turned it into a licensure bill.
Massachusetts – working on the issue not sure if any has been introduced.
Michigan (HB 5918 – 2006) – adapted from California
New Mexico (SB 18 – 2007) – does not follow any template
New York (2007 bill followed Minnesota template)
North Carolina is going to introduce in 2009-2010
Ohio (HB 148 – 2007-2008 session)
Utah (2006) - – adapted from national template
Virginia (SB 422- 2006) – Doesn't seem to follow any template, but is simply written – pertains to natural food products only.
Wisconsin working on legislation – not sure if any has been introduced.

Inconsistencies and Gray Areas in Montana Law:

Prepared by Montana Health Freedom Coalition

There are several places in Montana law where the statutes appear to protect health freedom by using some kind of language that says that the law is not meant to limit or regulate any other business or profession. However, most of those statements are then later followed by others that assert that a license is required to practice.

If the person does not defend themselves by saying they are practicing x profession and not the practice they are accused of violating, then the language requiring a license to practice can be used against them.

One profession has gotten around the health freedom language in their own statutes by referring their cases on to the Board of Medical Examiners when protected terminology has not been used (naturopaths).

The lack of consistency in language creates a gray area in the law: there is no standardization or uniformity in how the laws sanctioning unlicensed practice are administered. Where health freedom language is present, it echoes the intention of the courts: that a person is free to practice their own profession as long as they do not represent they are practicing another. Where it is not present, no such courtesy exists, and these boards are free to sanction persons working within the competencies of their own professions – even when no harm or risk of harm is evident.

Health Freedom Legislation would help the boards standardize the process for sanctioning practitioners and eliminate the gray areas in the law.

Below are statutes that contain "health freedom" language:

Physical Therapy: "This chapter may not be construed to limit or regulate any other business or profession or any services rendered or performed in connection with another business or profession" (37-11-102). **Note: It does not say authorized or licensed when describing the kind of business.**

Acupuncture: "This chapter does not affect the practice of an occupation by an individual who does not represent to the public that the individual is licensed under this chapter" (37-13-104) **Note: It does not say authorized or licensed when describing the kind of occupation.**

Occupational Therapy: "nothing in this chapter prevents or restricts the practice, services or activities of: (2) a person who... engages in other activities described in (the definition) but does not represent to the public that the person is an occupational therapist (37-24-104).

Naturopathic Physician: "This chapter recognizes that many of the therapies used by naturopathic physicians, such as the use of nutritional supplements, herbs, foods, homeopathic preparations, and such physical forces as heat, cold, water, touch, and light, are not the exclusive privilege of naturopathic physicians, and their use, practice, prescription, or administration by persons not licensed to practice naturopathic medicine is not prohibited by this chapter (37-26-302). **Note: It does not say that any person not licensed is prohibited from doing these acts – just persons not licensed to practice naturopathic medicine.**

Professional Counseling: the bill does not prohibit anyone "in the case of a qualified member of another profession who is not licensed or certified or for whom there is no applicable code of ethics from performing the duties and services consistent with the person's training, as long as the person does not represent by title that the person is engaged in the practice of professional counseling." (37-23-201)

Addiction Counseling: "If a person is a qualified member of a profession that is not licensed or certified or for which there is no applicable code of ethics, this section does not prohibit an activity or a service of the profession as long as the person does not represent by title that the person is a licensed addiction counselor." (37-35-201)

Dietician and Social Work: These two professions deal with health freedom in a slightly different way: they are title protection acts. No person may use the protected titles of the profession and no license is required to practice unless you represent to the public that you belong to that profession.

Deborah Kimmet

EMAILS

From: Deborah Kimmet [deb@debkimmet.com]
Sent: Friday, March 13, 2009 7:11 PM
To: 'michelereinhart@gmail.com'; 'mmilburn@mcn.net'
Cc: 'Joe Balyeat'
Subject: SB287 - Complaint Office Clarification / Registration

Hi Rep. Reinhart,

Since you mentioned that Rep. Milburn is interested in this issue too, I thought I'd forward this discussion on to him too.

After our conversation yesterday, I need to clarify a few things.

First, Minnesota, while they have a specific complaint office, they do not require registration. The set up is the same as with SB287: if there is a complaint, then the person furnishes the disclosure. The office is paid for via a \$65,000 yearly appropriation to deal with these issues.

FYI, the MN governor's office has been trying to shut down the office because it is not cost effective (there are only 17 complaints per year), and may finally get his wish due to budget cuts this year. If it is shut down, the enforcement would go to their AG's office... to be referred out. My understanding is that this process' equivalent in MT is as it is currently done in Montana: the complaint comes in to one place (DoLI) and then is referred out to the boards.

Second, I just need to reiterate that there IS a complaint process in place NOW. Otherwise, how would the boards be sanctioning unlicensed professions right now? SB287 only clarifies that process.

Third, after a lot of thought and discussion with other folks on this over the last few days, I've changed my personal views on the issue of registration to be in line with the rest of the groups I represent. Here's that info:

- **Registration Issues: Any registration is opposed for the following reasons:**
 - **SB287 is about board behavior and requiring the boards to follow court mandates, NOT shifting responsibility to the practitioner to sign-up to gain a protection that is rightfully theirs.**
 - So few people are/will be sanctioned that registration for everyone is not warranted.
 - The disclosure only needs to be sent to the state when the person is brought before a board, to show they are complying.
 - Creates more bureaucracy – and fees.
 - Someone has to collect and administer this, and how would it practically be run when practitioners are always getting new education?
 - The overseeing agency would have rulemaking capabilities and could abuse its power. It is very difficult to modify, or stop, or overturn the rulemaking process of an agency since they are considered the experts about the persons under their jurisdiction.
 - The cost of creating yet another bureaucracy is not warranted when so few practitioners are sanctioned each year.

- **Non-harming practices are not to be considered privileges to be doled out by a government. The courts have maintained that the practice has a right to be performed without governmental interference with certain public protections. Registration is NOT one of those public protections mandated by the courts.**
- **Government should not regulate those things that have not been shown by clear and convincing evidence to pose significant danger warranting police power regulation. Since these practices generally do not rise to that level of harm, practitioners as a group should not be forced to comply with this type of regulation.**
 - The only situation where this type of action is warranted is when the person is in clear violation, and then would show their disclosure to the government.
- **As health care choice is a fundamental right, laws should be held to a constitutional strict scrutiny standard which includes a showing of "compelling state interest" and "least restrictive means of regulation".**
 - There is no compelling state interest to take non-harming healing practices out of the public domain and put it under a mandate of registration (see above).
 - There is no compelling state interest to warrant registration of all people that do non-harming healing acts (see above).
 - There are less restrictive means of accomplishing the goals of the state therefore registration requirements do not meet the constitutional threshold of least restrictive means possible of regulation. SB287 as it is currently written DOES meet the "least restrictive" standard.
- The simple act of registering with an agency could possibly cause a practitioner to lose their right to the defense of lack of jurisdiction if they so wish to use it
- Registration requirements negatively impact consumers:
 - Consumers will lose legal access to healing practitioners who do not sign up and pay fees.
 - Costs to consumers increase as practitioners will pass on fees to clients.
 - Misuse of the title "registered" by practitioners who may use it to establish credibility, can cause misrepresentation to consumers.

I'm sorry that we disagree on this issue.

I've submitted amendments that we talked about and those will be brought to the committee.

Again, we aren't trying to be unreasonable here - but submitting to registration is not really a fair compromise.... because that is buying into the argument of the opponents: that we should be regulated as a profession. We don't rise to that level of harm and that is not what SB287 is about or does... and that would completely change the intent of the bill.

All we want is for the boards to clean up their act and follow what the courts have said. Our compromising comes in the form of reasonable amendments that strengthen public protection and don't infringe upon the rights granted by the courts -- which is what we've been doing all along and have been willing to do all along.

Thanks!

Yours in Health,

Deborah Kimmet
Montana Health Freedom Coalition
volunteer (unpaid) Legislative Liaison
406-251-9704

3/18/2009

Deborah Kimmet

From: Deborah Kimmet [deb@debkimmet.com]
Sent: Monday, March 16, 2009 7:16 PM
To: 'Michele Reinhart'
Cc: 'joebalyeat@yahoo.com'
Subject: RE: Amendments for SB 287 coming

Dear Rep. Reinhart,

First, let me say that I was pleased that you would share the AANP letter with me. I had thought Ms. Aagenes and I had a dialogue going, but evidently not. That's disappointing.

There are amendable issues in the letter and several items that are not.

The AANP is making the same assumption that other boards/associations are making or are trying to intentionally confuse you as to what the bill is about. The bill is not about "governing" unlicensed professions or creating a regulatory structure to regulate them, or somehow giving them the "privilege" of practice.

SB287 IS about boards complying with court decisions concerning and affirming the rights of non-harming professions in the public domain.

SB287 IS about clarifying the current complaint process and implementing court decisions in this regard. Those court decisions make clear that licensing is not the only way to ensure public protection, and it is sheer arrogance on the part of these boards and associations to assert otherwise.

We can't support a radical change in the complaint process (shifting complaints to the Alternative Health Care Board - AHCB):

1. SB287 does not outline a complaint process as the AANP letter states, because one currently exists. That complaint process won't change. When it is applied properly, this system works well. It just needs some clarification. The AANP is complaining about a system that is generally working, with adequate penalties in place. We see no compelling reason to change the statute 37-1-317.
2. Unlicensed practice is about professions, not boards, and the complaints relevant to a pertinent profession should be referred to its regulating board. The AHCB is made up of two professions, with one having no statutory authority to sanction any other profession not using their titles (naturopaths), and the other is midwives. Since unlicensed practice is about particular professions, it would require an extensive re-write of the practice act of the naturopathic statute to allow them to gain jurisdiction, and politically that would just not happen. It would require separate legislation to revise the NP practice act (which opens up another can of worms), and in the process would kill SB287 to incorporate this change into the bill.
3. Wholesale changes to that process would cause other ripple effects, and we suspect that is what the Alternative Health Care Board wants. By placing the burden on one board, that justifies additional regulation, like registration or licensing, and/or funding and/or more control. We oppose this. As we said, **the current process works well when it is properly applied.**
4. We also believe that such a move would further confuse the consumer. Consumers know to go either to a specific professional regulatory board or to the Department of Labor and Industry, and from there the cases are distributed. We think this process should remain intact. Also, the Alternative Health Care Board does not regulate complementary health care practices, and this would confuse the issue.
5. The process under SB287 has worked well in the 5 other states that have this type of regulation, and Minnesota is considering closing their office due to budget considerations (the cost doesn't justify the small number of complaints) and going to a similar system.

Provisions in the bill ensure that boards behave properly: The AANP complained that only the act or acts in question is sanctionable. We believe that is a fair and equitable solution. No one should lose their livelihood for a minor infraction.

It is not right and not fair for someone's livelihood to be taken away from them because the board can abuse its

power and "throw the book" at someone for a relatively minor infraction, or just because of personality issues. Boards are already abusing their sanctioning power – we see no reason to allow the boards unfettered ability to close down a person's entire practice for a minor infraction.

Requests for other amendments:

Section 4, prohibited acts is intended to be a list of acts that are so dangerous that even persons trained to do these acts should not be allowed to do them without a license. This is the standard used in other states, and the standard we've adopted in SB287. It is not intended to be a list of knee-jerk reactions of "oh they can't do that!" without any evidence whatsoever as to the danger posed. The courts have set a strict standard on this issue, that allows unlicensed professions to perform acts that are not harming, and that standard should be adhered to.

1. general chiropractic adjustments (beyond the language in the bill). "Adjustments," much less chiropractic adjustments are not defined in statute or rule and could mean anything from raising an arm to the "crack" that most people are familiar with. The terminology in the bill "high-velocity low-amplitude thrust to a joint" is the act that is very dangerous and we believe rises to the threshold of danger that requires a license. The language in SB287 is broader than chiropractic and allows other professions who do this type of manipulation the ability to sanction too. Further, the chiropractors were just fine with this language in a 2003 massage therapy bill, and as of March 11, were fine with this type of language in a draft massage therapy bill, so this tells me that even according to them, other forms of adjustment don't rise to the level of danger. We will not accept a language change here, as we think that the public is adequately protected.
2. Physical examinations that invade the body, including gynecological exams. Practitioners do a wide variety of examinations or assessments that are non-diagnostic in nature to gain information about the health of the client to help them determine a course of action. The assertion in the body of the AANP letter that this information gathering is dangerous is highly questionable. However, they do make a good suggestion at the end of the letter. Even so, the language of their suggestion is very vague – what does "invade" mean? Is opening the mouth and looking in the mouth "invade?" Again, our contention is that to be on the list, it must rise to a level of danger that even a trained practitioner shouldn't do it.

We propose: the prohibited acts are prefaced by: unless the person... "performs physical examinations that invade the body in ways that cause an imminent and discernible risk of significant harm, including gynecological exams,"

3. Testing: Unlicensed practitioners use a wide variety of tests, from muscle testing to looking at urine in a cup. Tests that are performed by unlicensed professions are educational in nature, not diagnostic, and provide information about the health of the client. These tests are not used to diagnose anything and help the practitioner monitor whether the client's health is improving or not. That is not diagnosis. Diagnostic testing implies/provides diagnosis, so is already prohibited in the prohibited acts. Plus, the word "diagnosis" is so vague, that ANY test could be considered diagnostic in nature depending upon the argument. The term "testing" is also very vague. Federal law (CLIA) deals with lab-type testing and we think that's adequate enough. Again, the idea of the prohibited acts is to prevent practitioners from performing acts that are so dangerous they should be done only by licensed persons. If a test, even if performed by a trained person, would harm that client in the commission of the test, then that specifically should be listed - like gynecological exams. We maintain that the proposed language to ban diagnostic testing is too vague, too far-reaching in its scope, and prevents practitioners who are trained to do so from gathering information that is useful when working with their clients.
4. Finger pricks: If you think it is necessary, we are happy to remove this from the bill. It possibly could rise to the level of danger, even though people do it to themselves every day.

Again, thanks for the opportunity to respond to these issues.

Yours in Health,

Deborah Kimmet

3/18/2009

Deborah Kimmet

From: Deborah Kimmet [deb@debkimmet.com]
Sent: Saturday, March 14, 2009 4:26 PM
To: 'Michele Reinhart'
Cc: 'bw208@bresnan.net'; 'michelereinhart@gmail.com'; 'rep.bbeck@centurytel.net'; 'paul@beckforcarboncounty.com'; 'emarntzen@excite.com'; 'shannonjaugare@aol.com'; 'tom@tomberymt.com'; 'ccboland@bresnan.net'; 'fleming@stignatius.net'; 'tjfarey@montana.com'; 'chunter717@bresnan.net'; 'klock@mtintouch.net'; 'mmilburn@mcn.net'; 'sreichner@centurytel.net'; 'cary@bresnan.net'; 'vancehd67@gmail.com'
Subject: RE: SB 287 - Reply to opponent - Ms. Hailstone

Thanks to Rep. Reinhart for the opportunity to reply to Ms. Hailstone's arguments.

What the opponents are doing, and Ms. Hailstone's letter is no different in this regard, is trying to confuse legislators.

First, SB287 is about board behavior, not about trying to regulate or establish a whole new system. It's not about starting a new profession or giving a privilege to practice to these professions. Most, if not all, arguments raised go to this issue and are discarded by understanding the true intent of the bill.

The courts have said that non-harming healthcare professions already have these rights and they belong in the public domain, without government oversight - unless they harm someone or otherwise break the rules - and the disclosure goes to proof that they did or did not break the rules. What our main issue is, and **SB287 IS INTENDED TO ADDRESS**, is that boards are sanctioning these professions in direct contradiction to the courts and for no compelling reason.

Boards are already spending the money of the licensees - and this will save the boards money in the long term, as everyone learns their rights and responsibilities and these frivolous cases are eliminated. Regarding the fiscal note: we contest it and you will have information about it in your packets at the hearing... but let me say two things: 3 states that enacted legislation that is the most similar to SB287 appropriated zero dollars and the manner in which the state wants to implement this regulation is simply wasteful spending and countermands the purpose of the bill, but more on that at the hearing.

Thanks for the opportunity to respond.

Deborah Kimmet
unpaid volunteer Montana Health Freedom Coalition

-----Original Message-----

From: Michele Reinhart [mailto:michelereinhart@gmail.com]
Sent: Saturday, March 14, 2009 10:28 AM
To: deb@debkimmet.com
Subject: Fwd: SB 287

----- Forwarded message -----

From: Barbara Hailstone <bjs@mcn.net>
Date: Fri, Mar 13, 2009 at 6:54 AM
Subject: SB 287
To: michelereinhart@gmail.com

I am writing to urge you to vote "no" to SB 287.

As I read over the bill I noted several issues of concern. My four primary concerns are listed below.

- The bill allows for unlicensed practitioners to provide "certain healthcare services" under "certain circumstances". I could find nowhere in the bill that defined who the unlicensed practitioners would be or how their competence to practice would be measured or monitored. What services are "certain healthcare services" referring to? What are the "certain circumstances" the unlicensed practitioners would be allowed to practice under?
- The bill states that the unlicensed practitioners protected by this bill "have received training specific to the services they provide". How will this be monitored? How will the state know the unlicensed practitioners have received training that makes them competent to practice? How will the state know the unlicensed practitioner has received any training at all?
- Under Section 5- Disclosure required- there were practices that must be followed by unlicensed practitioners to ensure the client receiving services knows the practitioner is not licensed to practice the services provided. I did not note anywhere in the bill how the state would ensure this requirement for disclosure is being followed.
- I was shocked to read that the bill proposes paying for the expenses incurred by passing this bill by increasing the fees of licensed Montana healthcare providers. My understanding of having licenses for healthcare providers is to ensure that those providers have received training from accredited institutions that ensure the providers are competent to provide services within a defined scope of practice. Asking them to pay for the costs incurred from passing this bill to allow unlicensed, undefined, unproven practitioners to provide undefined services under undefined circumstances seems unfair and insulting. The unlicensed practitioners who benefit from this bill should pay for the costs of enacting the bill.

This bill leaves many questions unanswered. It should not be passed. I appreciate you taking the time to read and consider my concerns.

Barbara Hailstone
Billings

Deborah Kimmet

From: Deborah Kimmet [deb@debkimmet.com]
Sent: Saturday, March 14, 2009 4:55 PM
To: 'Michele Reinhart'
Cc: 'bw208@bresnan.net'; 'michelereinhardt@gmail.com'; 'rep.bbeck@centurytel.net'; 'paul@beckforcarboncounty.com'; 'emarntzen@excite.com'; 'shannonjaugare@aol.com'; 'tom@tomberrymt.com'; 'ccboland@bresnan.net'; 'fleming@stignatius.net'; 'tjfarey@montana.com'; 'chunter717@bresnan.net'; 'klock@mtintouch.net'; 'mmilburn@mcn.net'; 'sreichner@centurytel.net'; 'cary@bresnan.net'; 'vancehd67@gmail.com'
Subject: RE: SB 287 - Response to Opponent - Ms. Melik

Thanks to Rep. Reinhart for allowing me the opportunity to respond to this opponent - Ms. Melik

Again, the opponents are trying to confuse you as to the intent of the bill. It is about board behavior and boards directly contradicting what the courts have said with regard to sanctioning professions other than the one regulated by the respective board.

The core issue is: boards are abusing their sanctioning power - and practitioners have no choice but to buckle under to this abuse because they can't afford to assert their rights in court.

Ms. Melik is perpetuating a myth that is being brought forth by the opponents. Let me refute it right now: THERE IS NO IMMUNITY IN SB287. There are clear remedies for harm should a consumer be harmed.

And what is most perplexing is how the opponents contradict themselves: FIRST they say that there has to be oversight and THEN they say the bill is not needed (which basically means there is no oversight needed). You see, when a profession is not licensed, there is no oversight to the level that licensure affords. AND the COURTS agree (and so does the state, as these professions are not licensed) - no such oversight is needed for non-harming professions.

However, there has to be a mechanism in place when professions harm, and that mechanism remains in place under SB287 - we are not taking away any board's rights to go after a profession that harms someone. There are clear remedies for harm. The courts have outlined consumer protections and they are incorporated into the bill and strengthened via the additional consumer protections that we've included.

And Ms. Melik brings up another point: she uses the word "consumer" to describe herself, but she is also a licensed provider. In turf wars such as this, it is important to look beyond the practitioners involved. Where do the true consumers (those who are not practitioners) come down on the issue? **The vast majority support SB287** as the right thing to do. Just look at your emails.

Thanks for the opportunity to respond!!

Yours in Health,
 Deb Kimmet
 unpaid volunteer Montana Health Freedom Coalition

-----Original Message-----

From: Michele Reinhart [mailto:michelereinhardt@gmail.com]
Sent: Saturday, March 14, 2009 10:28 AM
To: deb@debkimmet.com
Subject: Fwd: SB 287

3/18/2009

----- Forwarded message -----

From: **Linda Melick** <lmelick@cmmccares.com>

Date: Fri, Mar 13, 2009 at 8:31 AM

Subject: SB 287

To: michelereinhardt@gmail.com

Senator Reinhart:

I am sending you this message to let you know of the concerns I have about this bill. As a licensed professional, I realize the importance of licensure and oversight. My concern is that this bill will allow people to practice with no oversight, which leads to serious harm of public health and safety. As a consumer I do not feel safe if someone is allowed to practice without regulations and without the appropriate skills. This bill is not needed – the proponents are already practicing in the state. No one should be allowed to practice in a profession with immunity. We need oversight to protect the public from harm. I urge you to vote NO on SB287. Thank you, Linda Melick

Linda Melick, B.S., R.D., L.N., Registered Dietitian

Central Montana Medical Center

408 Wendell Avenue

Lewistown, MT 59457

406-535-6265

lmelick@cmmccares.com

Deborah Kimmet

From: Deborah Kimmet [deb@debkimmet.com]
Sent: Saturday, March 14, 2009 5:41 PM
To: 'Michele Reinhart'
Cc: 'bw208@bresnan.net'; 'michelereinhart@gmail.com'; 'rep.bbeck@centurytel.net'; 'paul@beckforcarboncounty.com'; 'emarntzen@excite.com'; 'shannonjaugare@aol.com'; 'tom@tomberrymt.com'; 'ccboland@bresnan.net'; 'fleming@stignatius.net'; 'tjfarey@montana.com'; 'chunter717@bresnan.net'; 'klock@mtintouch.net'; 'mmilburn@mcn.net'; 'sreichner@centurytel.net'; 'cary@bresnan.net'; 'vancehd67@gmail.com'
Subject: RE: SB 287 - Response to Opponent - Ms. Romanelli

Thanks again to Rep. Reinhart for the opportunity to respond to Ms. Romanelli' opposition.

First, let me say that Ms. Romanelli is spearheading an effort to license massage therapists, and the group she represents seems to believe that opposing SB287 will somehow help pass their licensing bill. Licensing and Health Freedom are two separate issues: licensing defines one profession and creates standards for it, while SB287 (health freedom) is about board behavior and requiring the boards to comply with court decisions.

SB287 does not interfere with any profession's ability to license itself. In fact, we have supporting national organizations (2 music therapy groups among them) who would like to be licensed some day and see SB287 as an interim step to allow their practitioners to practice safely and legally until they can pursue their licensing agenda. In short, SB287 protects emerging professions from frivolous board action.

While much of her letter adheres to the opponents' strategy of confusing the issues in a bid to confuse you, there are a couple of new points to address here:

1. Ms. Romanelli clearly does not understand the regulatory role of boards, as even boards do not supply monetary compensation to consumers - that is a civil matter, and does not change under SB287.
2. The liability insurance issue is the same whether the person is licensed or not: Montana law does not require any independently working practitioners to carry liability insurance (it mostly requires them to do so only if they are in a supervisory capacity). Employers may require them to do so to absolve the employing agency of liability. This is also the case for the unlicensed professions: employers may require it, and some individuals carry it while some don't.
3. Ms. Romanelli also is wrong about there being no place to complain. The complaint process doesn't change. If the bill fails, complaints will be made to the Department of Labor and Industry. If the bill passes, complaints will STILL be made to the same department, just as they always have been.
4. and we've already dealt with the money issues. If SB287 passes, the boards will pay for the complaints. If SB287 fails, the boards will STILL pay for the complaints. That doesn't change. We just think that there will be fewer frivolous complaints, so there will be less money coming out of the department.
5. Registration fees imply registration. This is a new strategy on the part of the opponents.
 - a. The courts have said that providing these non-harming professions is a right, not a privilege to be doled out by the government.
 - b. No one should have to pay OR sign-up with the government for a right that is already theirs to be had. Boards are abusing those rights, and SB287 restores those rights to the practitioner by requiring the courts to comply.
 - c. when something is a fundamental right, laws instituted that speak to those rights should adhere to the constitutional standard of "compelling state interest" and "least restrictive means possible." - Registration does not meet that standard. There is no need to impose registration (and the bureaucracy and costs to administer it) on everyone, when all that is necessary is to have the person show that they were in compliance with that part of the law when a complaint is raised.

What the opponents are trying to do here is kill the bill by adding excessive and costly regulation when all that is necessary is a small regulatory change in the questions posed during the course of an investigation by the department.

Again, thanks for the opportunity to respond!!

Deborah Kimmet
volunteer unpaid Montana Health Freedom Coalition
406-251-9704

-----Original Message-----

From: Michele Reinhart [mailto:michelereinhart@gmail.com]
Sent: Saturday, March 14, 2009 10:17 AM
To: deb@debkimmet.com
Subject: Fwd: Please oppose SB 287

----- Forwarded message -----

From: **Rachel Romanelli** <rachelnwsn@hotmail.com>
Date: Fri, Mar 13, 2009 at 6:37 PM
Subject: Please oppose SB 287
To: Bill Wilson <bw208@bresnan.net>, Michele Reinhart <michelereinhart@gmail.com>, Bill Beck <rep.bbeck@centurytel.net>, paul@beckforcarboncounty.com, elsie arntzen <emarntzen@excite.com>, Shannon Augere <shannonjaugare@aol.com>, tom@tomberrymt.com, Carlie Boland <ccboland@bresnan.net>, John Fleming <fleming@stignatius.net>, Tim Furey <tjfurey@montana.com>, chunter717@bresnan.net, Harry Klock <klock@mtintouch.net>, Mike Milburn <mmilburn@mcn.net>, Scott Reichner <sreichner@centurytel.net>, Cary Smith <cary@bresnan.net>, vancehd67@gmail.com

Dear Honorable Representative,

I strongly encourage you to ***not*** support the Consumer Health Freedom and Access Act SB287.

I have lived in Montana for the last 9 years and have for the last 14 years practiced as a Massage Therapist. I am also a consumer.

A freedom of access bill does not provide protection for the health, safety and welfare of Montana citizens. In addition it does *not* require the provider to adhere to any *educational* or *ethical* standards.

It is only meant for the provider to give a list of what training they have and then the public must decide if they believe that the statement is valid or that the provider has enough training. This

clearly puts the burden of proof on Montana citizens. The provider is not required to carry liability insurance. If a customer is treated unethically or damaged in some way by the provider, there is no regulatory body to report the harm to, or to request monetary compensation.

SB 287 includes document requirements for those who would presume to practice under this act. This means that the department is responsible for enforcing these requirements under title 37-1-411.

SB 287 does not require registration fees. This leaves the department with the sole financial burden for administering and enforcing this act, an act that does not protect the public.

Please protect the public and do *not* support SB287

Thank you for your time and service in the Montana Legislature.

Sincerely,

Rachel Romanelli,

WA. St. L.M.P.

Health Options Clinic

3031 S. Russell St.

Missoula, MT 59801

406-550-0104

Windows Live™: Keep your life in sync. Check it out.

Deborah Kimmet

From: Deborah Kimmet [deb@debkimmet.com]
Sent: Sunday, March 15, 2009 2:10 PM
To: 'Michele Reinhart'
Cc: 'bw208@bresnan.net'; 'michelereinhart@gmail.com'; 'rep.bbeck@centurytel.net'; 'paul@beckforcarboncounty.com'; 'emarntzen@excite.com'; 'shannonjaugare@aol.com'; 'tom@tomberrymt.com'; 'ccboland@bresnan.net'; 'fleming@stignatius.net'; 'tjfurey@montana.com'; 'chunter717@bresnan.net'; 'klock@mtintouch.net'; 'mmilburn@mcn.net'; 'sreichner@centurytel.net'; 'cary@bresnan.net'; 'vancehd67@gmail.com'
Subject: RE: Response to Opponent - Mr. Nix

Thanks to Rep. Reinhart for the opportunity to respond to Mr. Nix's concerns.

Mr. Nix's letter is quite lengthy, but my response is fairly short.

Mr. Nix's letter is typical of the opponents' strategy to try to confuse you about the intent of the bill by bringing up all kinds of issues that confuse you into thinking that this bill is about something different.

Their message is also confusing because they tell you that under SB287 there are no adequate practitioner standards, but they fail to point out that these same conditions exist if SB287 isn't passed... and that's because SB287 is not about the practitioner standards - it is about the boards' behavior AND the COURTS' standards that boards are held to when cases are litigated.

Please don't let the opponents confuse you:
SB287 DOES have standards - the courts' standards plus additional consumer protections that are currently NOT in place.
SB287 is about board behavior
SB287 does have remedies for harm
SB287 does not interfere with the consumer's ability to seek redress in civil or criminal court for negligence or fraud or harm .

Just on the off chance that you are interested, I've gone through and pointed out some things about his letter. You can scroll below and see my responses in red.

Note: after having done so, I discovered that, lost in the minutae is actually an amendable item. I've pointed it out.

Thanks for the opportunity to respond!

Yours in Health,
Deborah Kimmet
unpaid volunteer Montana Health Freedom Coalition

-----Original Message-----

From: Michele Reinhart [mailto:michelereinhart@gmail.com]
Sent: Saturday, March 14, 2009 10:18 AM
To: deb@debkimmet.com
Subject: Fwd: Citizen Letter - Please oppose SB 287

----- Forwarded message -----

From: **David Nix** <stmptwnboy@hotmail.com>

Date: Fri, Mar 13, 2009 at 4:50 PM

Subject: Citizen Letter - Please oppose SB 287

To: bw208@bresnan.net, michelereinhardt@gmail.com, rep.bbeck@centurytel.net, paul@beckforcarboncounty.com, emarntzen@excite.com, shannonjaugare@aol.com, tom@tomberrymt.com, ccboland@bresnan.net, fleming@stignatius.net, tjfurey@montana.com, chunter717@bresnan.net, klock@mtintouch.net, mmilburn@mcn.net, sreichner@centurytel.net, cary@bresnan.net, vancehd67@gmail.com

Cc: Rachel Romanelli <rachelnwsn@hotmail.com>

Honorable Legislator,
Please oppose SB 287!

In the interests of full disclosure, let me say that I am a member of the American Massage Therapy Association board. However, neither any other current piece of legislation, nor my board membership drives me to oppose SB287. This opposition is personal, and stems from my own strong beliefs and opinions. SB 287 is a poorly written piece of legislation, filled with loopholes and lacking in hard, statistical evidence. While I completely agree that unlicensed providers should be allowed to practice in Montana without fear of unjust persecution, I do not believe that this bill is an adequate vehicle to protect them. Nor am I convinced that a level of persecution currently exists that would make this protection necessary.
In 34 cases, 22 practitioners were cited in a way that violated the courts' standards.

One of Ms. Kimmet's latest talking points for SB 287 is that passing this bill will help with health care in rural areas. I see two faults in this argument:

It was not my argument: someone (a senator) brought it up, and I agreed with him that in areas where there were not licensed folks available that alternative health care practitioners can and do help fill healthcare needs.... at no point did I say that they would Replace a licensed professional.... so his argumeents below have no merit.

a) All of these unlicensed health care practitioners are already practicing in towns all over Montana, and given Ms. Kimmet's comments on the subject, they have been there for some time. Therefore, if problems with providing rural Montanans with quality health care still exist (and I believe they do), it would then stand to reason that unlicensed practitioners are not the answer.

b) Is this the message we really want to send to rural Montanans? "We know you need better health care services, but we can't send you any licensed doctors, nurses, PTs, OTs, chiropractors, accupuncturists, etc., so you'll just have to settle for the unlicensed health care providers you've already got. We cannot guarantee that they have any particular level of training or knowledge, but hopefully they will help more than they have in the past. Good luck getting your insurance to pay for it!"

1) Since the bill originator took the proposed government employee out of the fiscal note, there does not appear to be anyone responsible for

TO: Rep. Bill Wilson, House Business & Labor
RE: Support SB287 – Consumer Health Freedom & Access – FAX # 1
Fax #1: The Problem, Ways to Fix it: SB287 as a middle way.

The Problem:

A technical glitch in Montana law allows licensing boards to sanction alternative and complementary health care professions just because there is a small overlap in scope between professions. In about a year's time, 22 such practitioners were sanctioned, not because anyone was harmed, not because the person pretended to be licensed or otherwise defrauded the consumer, but because the boards technically can.

Lawsuits across the country have led to extensive case law developed over the past 100+ years that asserts that licensing standards cannot be used to effectively destroy a profession or to prevent its practice and it may not arbitrarily regulate private business under the guise of protecting the public. The court has laid out standards that protect both the practitioner and the public in its rulings.

Ways to Fix the Problem:

1. **Do Nothing:** This means that **hard-working Montanans who have done nothing wrong will continue to be put out of business for no good reason.** Those that can afford to will litigate, adding to board costs. Those that have no money will not be able to do so, and will have no recourse but to stop working, adversely affecting their families. Practitioners afraid to do what they've been trained to do and have a right to do, will shut down their practice. Consumers who access these services will no longer have access and costs will increase as there are fewer providers.
2. **License Everyone:** This means licensing 1200+ distinct professions. These professions tend to be no or low risk (we have statistics on this if you'd like them). The intention of licensing is to protect the public, not to protect the turf of the profession. We estimate that anywhere from 200 to 400 bills to establish the individual practice acts of these professions would be necessary to protect the turf of all the unlicensed professions. This would drive up costs to the consumer and the practitioner, while adding to and creating a huge governmental bureaucracy.
It's just not necessary and is a "big stick" solution to the problem.
3. **Require the Boards follow the standards that the courts have developed:** This is a middle way. The courts have outlined that boards cannot arbitrarily sanction or shut down practitioners without good cause. **SB287 follows the courts' standards and exceeds them by adding additional public protections not required by the courts.**

The Boards are already sanctioning unlicensed alternative and complementary health care professions, but they are doing so arbitrarily and inconsistently. There are also inconsistencies in Montana law that SB287 would clarify.

SB287 standardizes the circumstances of whom and how the Boards would sanction.

PLEASE SUPPORT SB287

Prepared by:
Deborah Kimmet / Montana Health Freedom Coalition (volunteer)
deb@debkimmet.com 406-251-9704

TO: Rep. Bill Wilson, House Business & Labor
RE: **Support SB287 – Consumer Health Freedom & Access – FAX # 2**
Fax #2: The Opponents are Wrong – Part 1

The opponents are wrong about what SB287 does. Here are the facts:

1. **SB287 is a simple exemption that clarifies and standardizes how boards sanction someone from a DIFFERENT profession.** For example, the Board of Medical Examiners sanctioning an herbalist (practicing within the scope of herbalism) for violating the practice of medicine.
2. **There is no clear statutory right for these licensed professions to be able to sanction another unlicensed profession.** The statutes allow for someone who is in a profession to be sanctioned for unlicensed practice within that same profession.
The statutes also allow for someone to be sanctioned for unlicensed practice of a licensed profession. BUT, what if someone is practicing their own profession and asserts they are NOT practicing a licensed profession? The courts have stepped in to settle this conflict. And over the course of 100+ years have developed meaningful case law.
3. **The courts have asserted that unlicensed professions have a right to exist and be practiced within limits.** Further, licensing standards may not be used to effectively destroy a profession or prevent its practice, particularly for economic gain. The courts developed general standards of public protection which are incorporated into the bill – and strengthened to be even stricter limits than what the courts have determined (to strengthen consumer protection). Until now, practitioners from these unlicensed professions in Montana didn't know they had these rights, and the boards (in the majority of cases) have ignored them: by not informing practitioners of their rights, it is much easier to sanction them.
4. **SB 287 levels the playing field:** boards won't be able to ignore the rules and professions will no longer allow themselves to be sanctioned because they know how to protect their rights. It shifts the burden to the state to follow the rules and away from the practitioner, who, without enactment of SB287, would need to take the board to court to assert their rights. Many alternative health care practitioners are lower income who cannot afford to assert their rights via litigation. **SB287 ensures fair treatment** for those practitioners.
5. **SB287 adds a layer of consumer protection not currently found in Montana law.** Right now these unlicensed services are available, with no public protection in place. Right now, practitioners do not have to divulge any information about their training, background or their status in Montana law. To gain the protection offered by SB287, the practitioner would be required to disclose their training, their background and experience, AND also state that they are not licensed, that the person may seek out a diagnosis from a licensed provider at any time and other required information. We believe that a knowledgeable consumer is a protected consumer, and adds a layer of public protection that is currently not available.

The opponents are not interested in negotiating or in doing anything but protecting their own turf. In fact, we approached key boards and associations to get their feedback and input. Instead, all we've gotten is opposition, not negotiation (that is, if they would even speak to us). We aren't unreasonable people: if there's an argument that has merit, we've amended the bill to address the issue. And we are still doing that.

One further point that we want to leave you with:

In a turf battle like this one, it's usually the practitioners who are duking it out.
However, **CONSUMERS KNOW WHAT IS AT STAKE HERE AND ARE RISING UP IN SUPPORT OF SB287.**
How many consumers are rising up against this bill? I have googled all the opponent's emails that have been sent to me. ALL of them are practitioners.

We think that consumers know what they need. They agree that SB287 supports their right to access the health care of their choice in a safe and responsible manner. We hope that you will agree too.

PLEASE SUPPORT SB287

Prepared by: Deborah Kimmet / Montana Health Freedom Coalition (volunteer)
deb@debkimmet.com 406-251-9704

Don't let the opponents confuse you:

- **SB287 is NOT about starting a new profession or “giving” any practitioner the privilege to practice.** Practitioners already have a right to practice: when no one is harmed and certain public protections are followed, the courts have guaranteed this right. These professions already exist and they are already practicing.
 - **No licensure / registration / no transfer of control to the Alternative Health Care Board.** All of these solutions require a creation of a new bureaucracy. We don't need it. **The problem is how boards sanction – so fix that problem, not create a whole new bureaucracy.**
 - No Licensing: These professions don't rise to the level of harm, and it's not good policy to license a profession just to protect turf. It would cost the state millions to license them all.
 - No Registration: SB287 is about requiring the boards to follow court mandates, NOT shifting responsibility to the practitioner to sign-up to gain a protection that is rightfully theirs. These practices already have the fundamental right to practice and any laws should be held to a constitutional strict scrutiny standard which includes showing of “compelling state interest” and “least restrictive means of regulation.” Simply registering people because they are performing non-harming healing acts is not a compelling state interest and there are less restrictive means of regulation, so this constitutional standard is not met.
* **Use of the title “registered” will create more confusion among consumers**, believing that the state has somehow sanctioned these practitioners.
* Rulemaking can impose standards upon practitioners that can infringe upon their court protected rights.
- It doesn't make sense to create any new bureaucracy just to take care of the 10 or so valid unlicensed practice cases per year that we expect the boards to see. That's not cost effective.**
- **There IS a complaint process in place AND practitioners are currently being sanctioned by licensing boards. The system IS working when it is properly applied.** SB287 does not change that.
 - Complaint process will stay the same
 - SB287 standardizes the process and helps reduce frivolous cases, so it will save money
 - SB287 makes the system more efficient and effective by clarifying and making more accurate the questions for investigators.
 - **SB287 clarifies Montana law** that boards are wrongfully using to unnecessarily prosecute people for not harming anyone AND it adds more consumer information about their health care providers.
 - **SB287 helps save the state money:** frivolous cases will be reduced and litigation that may result from practitioners (who now know their rights) defending themselves will be minimized. We believe that NOT enacting SB287 creates a liability issue for the state. Up until this time, practitioners didn't know their rights. Now they do.
 - **SB287 is also about basic fairness:** SB287 makes the system fairer to practitioners in the public domain who don't have the money to assert their rights in court. **SB287 levels the playing field by requiring the boards to do the right thing.**
 - SB287 clarifies Montana law by describing a safe harbor exemption that is already legal.

Prepared by:

Deborah Kimmet / Montana Health Freedom Coalition (unpaid volunteer)
deb@debkimmet.com 406-251-9704